

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
PLAINTIFF,)
VS.)
RAMESH "SUNNY" BALWANI,)
DEFENDANT.)
) CR-18-00258-EJD
) SAN JOSE, CALIFORNIA
) APRIL 26, 2022
) VOLUME 22
) PAGES 3697 - 3959

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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1 SAN JOSE, CALIFORNIA

APRIL 26, 2022

2 P R O C E E D I N G S

3 (COURT CONVENED AT 9:16 A.M.)

4 (JURY OUT AT 9:16 A.M.)

5 THE COURT: THANK YOU. PLEASE BE SEATED.

6 ALL RIGHT. THANK YOU.

7 WE'RE ON THE RECORD IN THE BALWANI MATTER. ALL COUNSEL

8 ARE PRESENT. MR. BALWANI IS PRESENT.

9 THANK YOU FOR YOUR PATIENCE THIS MORNING, LADIES AND
10 GENTLEMEN.

11 WE'RE OUTSIDE OF THE PRESENCE OF THE JURY. WE RECEIVED --

12 MS. ROBINSON RECEIVED A NOTE YESTERDAY AFTERNOON ABOUT THREE

13 MATTERS THAT MR. COOPERSMITH WANTED TO -- IS THIS RIGHT, SIR?

14 MR. COOPERSMITH: YES, YOUR HONOR.

15 THE COURT: RIGHT. WHAT WOULD YOU LIKE TO TALK
16 ABOUT?

17 MR. COOPERSMITH: THANK YOU.

18 THERE ARE A FEW MATTERS, YOUR HONOR. THANK YOU.

19 FIRST, THERE'S AN EXHIBIT THAT -- IT'S EXHIBIT 9939 THAT

20 WAS ADMITTED CONDITIONALLY WHEN ERIKA CHEUNG WAS ON THE STAND.

21 AND WE BELIEVE WE'VE LAID THE FOUNDATION THROUGH DR. ROSENDORFF
22 TO REMOVE THE CONDITION.

23 I DON'T KNOW IF THERE'S ANY DISPUTE ABOUT THAT. I COULD

24 CITE THE COURT TO THE TRANSCRIPT, BUT IF THE COURT WOULD LIKE

25 ME TO DO IT IN FRONT OF THE JURY, I JUST WANT TO MAKE SURE THAT

09:18AM 1 WE'RE ON THE SAME WAVELENGTH WITH THE GOVERNMENT ON THAT

09:18AM 2 PARTICULAR POINT.

09:18AM 3 MR. BOSTIC: NO OBJECTION. APOLOGIES, YOUR HONOR.

09:18AM 4 THE COURT: THE EXHIBIT WAS ADMITTED CONDITIONALLY.

09:18AM 5 I THINK THE CONDITION THE COURT STATED WAS THAT IF THE

09:18AM 6 FOUNDATION WAS NOT LAID, THAT THE COURT WOULD STRIKE IT OR GIVE

09:18AM 7 SOME OTHER INFORMATION.

09:18AM 8 MR. COOPERSMITH: OKAY.

09:18AM 9 THE COURT: SO IF YOU WANT TO REFERENCE IT AND

09:18AM 10 INDICATE THAT YOU WANT THE COURT TO INDICATE THAT THAT IS

09:18AM 11 ADMITTED, THAT'S FINE. I THINK IT WAS ADMITTED UNTIL THE

09:18AM 12 CONTRARY.

09:18AM 13 MR. COOPERSMITH: IF THAT'S THE CASE THEN,

09:18AM 14 YOUR HONOR, I DON'T THINK I NEED TO DO ANYTHING ELSE. I JUST

09:18AM 15 WANTED TO MAKE SURE --

09:18AM 16 THE COURT: RIGHT.

09:18AM 17 BUT IF YOU WOULD LIKE ME TO INDICATE THAT IT'S ADMITTED

09:19AM 18 AND THE CONDITIONS ARE LIFTED?

09:19AM 19 MR. COOPERSMITH: OKAY. THAT WOULD BE HELPFUL,

09:19AM 20 YOUR HONOR. THANK YOU. I APPRECIATE THAT.

09:19AM 21 THE COURT: SURE.

09:19AM 22 MR. COOPERSMITH: THE SECOND MATTER, THERE'S A --

09:19AM 23 YOU MIGHT RECALL LAST WEEK ON APRIL 20TH, THERE WAS AN ARGUMENT

09:19AM 24 IN THE MORNING ABOUT DR. ROSENDORFF'S POST-THERANOS CAREER AND

09:19AM 25 THERE WERE THREE DIFFERENT LABS THAT HE WAS ASSOCIATED WITH.

09:19AM 1 ONE OF THEM WAS A LAB CALLED PERKIN ELMER, AND I JUST
09:19AM 2 WANTED TO MAKE SURE IT WAS CLEAR FOR THE RECORD THAT ON
09:19AM 3 APRIL 21ST, I RECEIVED INFORMATION FROM THE GOVERNMENT THAT THE
09:19AM 4 LAB WHERE DR. ROSENDORFF IS THE LAB DIRECTOR, WHICH IS THE
09:19AM 5 VALENCIA BRANCH OF THIS PERKIN ELMER LAB, IS ACTUALLY CLOSING
09:19AM 6 BECAUSE APPARENTLY THE STATE OF CALIFORNIA CANCELLED THE
09:19AM 7 CONTRACT WITH THE LAB.

09:19AM 8 AND THEN ON APRIL 22ND, WHICH WAS FRIDAY, I RECEIVED AN
09:19AM 9 EMAIL WHERE DR. ROSENDORFF HAD SENT AN EMAIL TO GARY YAMAMOTO,
09:19AM 10 WHO IS AN EMPLOYEE OF CMS, AND DR. ROSENDORFF WAS ASKING THAT
09:20AM 11 HE BE REMOVED FROM THE LICENSE, YOU KNOW, IMMEDIATELY UPON THE
09:20AM 12 LAB CLOSING, WHICH IS GOING TO BE ON MAY 18TH, APPARENTLY.

09:20AM 13 AND THEN DR. ROSENDORFF SENT ANOTHER EMAIL SAYING, CAN WE
09:20AM 14 DO THIS BASICALLY AS SOON AS POSSIBLE ON MAY 19TH, AND THEN
09:20AM 15 MR. YAMAMOTO SAID, YOU KNOW, WE'LL DO OUR BEST.

09:20AM 16 BUT I THINK THIS IS JUST ADDITIONAL INFORMATION THAT
09:20AM 17 DR. ROSENDORFF SEEMS TO BE VERY CONCERNED ABOUT HIS REPUTATION.
09:20AM 18 HE -- YOU KNOW, HE'S GOING SO FAR AS TO IMMEDIATELY WANT TO
09:20AM 19 REMOVE HIMSELF FROM THE LICENSE.

09:20AM 20 IT IS ADDITIONAL INFORMATION THAT APPARENTLY NOT
09:20AM 21 EVERYTHING IS RIGHT WITH THIS PARTICULAR LAB, BECAUSE EVEN
09:20AM 22 THOUGH, AS THE COURT KNOWS, THE IMMEDIATE JEOPARDY WAS
09:20AM 23 APPARENTLY RESOLVED, SEVERAL IMMEDIATE JEOPARDIES, IN FACT, THE
09:20AM 24 STATE OF CALIFORNIA IS CANCELLING THE CONTRACT AND THE LAB IS
09:20AM 25 CLOSING.

09:20AM 1 SO WE RENEW OUR REQUEST TO GO INTO IT WITH DR. ROSENDORFF,

09:20AM 2 BUT AT THE VERY LEAST, WE WANT TO MAKE SURE IT IS VERY CLEAR ON

09:21AM 3 THE RECORD.

09:21AM 4 MR. BOSTIC: SO, YOUR HONOR, THE GOVERNMENT'S

09:21AM 5 POSITION IS THE SAME. NOTHING HAS CHANGED THAT SHOULD CHANGE

09:21AM 6 THE COURT'S ANALYSIS HERE.

09:21AM 7 FIRST OF ALL, WHEN WE'RE TALKING ABOUT WHETHER THERE IS

09:21AM 8 SOMETHING HANGING OVER DR. ROSENDORFF THAT MIGHT GIVE HIM

09:21AM 9 HYPOTHETICAL MOTIVE TO SHAVE HIS TESTIMONY IN FAVOR OF THE

09:21AM 10 GOVERNMENT, THAT STILL HAS NOT BEEN SHOWN.

09:21AM 11 THE PREVIOUS IMMEDIATE JEOPARDY FINDINGS WERE RESOLVED, AS

09:21AM 12 COUNSEL ADMITTED.

09:21AM 13 AND TO THE EXTENT THAT THIS LAB CLOSURE HAS ANYTHING TO DO

09:21AM 14 WITH THAT, IT APPEARS THAT THAT ISSUE IS NOW RESOLVED ALSO.

09:21AM 15 THE LAB IS GOING TO BE CLOSED, SO THERE'S NO SHOWING THAT

09:21AM 16 THERE IS ANY PENDING DECISION THAT DR. ROSENDORFF MIGHT AGAIN

09:21AM 17 HYPOTHETICALLY TRY TO INFLUENCE THROUGH HIS TESTIMONY.

09:21AM 18 WHEN IT COMES TO THE REPUTATIONAL ARGUMENT, MY MAIN

09:21AM 19 CONCERN IS THAT THAT ARGUMENT IS TOO BROAD AND CAPTURES TOO

09:21AM 20 MUCH. THE FACT THAT A WITNESS MIGHT HAVE ANOTHER MATTER IN THE

09:22AM 21 PUBLIC VIEW THAT MAKES HIM LOOK BAD CANNOT BE ENOUGH TO WARRANT

09:22AM 22 DELVING INTO THAT ON CROSS-EXAMINATION. OTHERWISE IT WOULD

09:22AM 23 OPEN THE DOOR TO ALL KINDS OF THINGS.

09:22AM 24 I THINK THE FACT THAT THE LAB IS CLOSING AS A RESULT OF

09:22AM 25 THE PROBLEMS IS AN ASSUMPTION ON MR. COOPERSMITH'S PART. I'M

09:22AM 1 NOT AWARE OF ANY OFFICIAL LANGUAGE FROM THE STATE THAT EXPLAINS
09:22AM 2 THAT THAT'S WHY THAT DECISION WAS MADE.

09:22AM 3 SOMETHING I SAW INDICATED THAT IT WAS RELATING TO THE
09:22AM 4 AVAILABILITY OF OTHER ALTERNATIVES. I BELIEVE THAT LAB, AT
09:22AM 5 LEAST MY UNDERSTANDING WAS THAT IT WAS BROUGHT INTO OPERATION
09:22AM 6 FOR PURPOSES OF DOING THIS TESTING, AND SO THE CANCELLATION OF
09:22AM 7 THAT CONTRACT IS -- REMOVES THAT LAB'S REASON FOR BEING.

09:22AM 8 THAT'S NOT THE SAME THING AS THE LAB BEING SHUT DOWN AS AN
09:22AM 9 ENFORCEMENT ACTION. I THINK THAT'S AN IMPORTANT DISTINCTION.

09:22AM 10 BUT I THINK THE OVERARCHING POINT IS THAT THIS IS
09:22AM 11 COMPLETELY UNRELATED TO DR. ROSENDORFF'S WORK AT THERANOS, AND
09:23AM 12 FOR THAT REASON SHOULDN'T BE ADMISSIBLE UNDER 403.

09:23AM 13 THE COURT: ANYTHING FURTHER?

09:23AM 14 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

09:23AM 15 THE COURT: OKAY. THANK YOU.

09:23AM 16 WELL, IT -- THANK YOU FOR UPDATING ME ON THE STATUS WITH
09:23AM 17 THIS LABORATORY.

09:23AM 18 AND I HAVEN'T HEARD ANYTHING THAT SUGGESTS IT WAS ANYTHING
09:23AM 19 OTHER THAN A BUSINESS DECISION. I DON'T KNOW IF THE CONTRACT
09:23AM 20 WAS CANCELLED. IS THAT A BUSINESS DECISION OF THE STATE, OR
09:23AM 21 WAS IT BECAUSE OF SOME INVESTIGATION?

09:23AM 22 IT SOUNDS LIKE IT MIGHT BE ALL RELATED, BUT I JUST DON'T
09:23AM 23 THINK THAT THERE'S ENOUGH, MR. COOPERSMITH, BASED ON WHAT
09:23AM 24 YOU'VE TOLD ME.

09:23AM 25 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:23AM 1 MY FOCUS WAS REALLY ON, FROM DR. ROSENDORFF'S PERSPECTIVE,
09:23AM 2 WANTING TO BE, ACCORDING TO THE EMAIL THAT WE RECEIVED FROM THE
09:23AM 3 GOVERNMENT ON FRIDAY, WANTING TO BE REMOVED FROM THE
09:23AM 4 LABORATORY, YOU KNOW, IMMEDIATELY, LIKE THIS IS HIS FIRST
09:23AM 5 THOUGHT, I DON'T WANT TO BE ASSOCIATED WITH THIS ANYMORE.

09:23AM 6 THAT WAS REALLY THE FOCUS MORE THAN WHAT THE REASONS WERE
09:24AM 7 FOR THE STATE -- ALTHOUGH MY SENSE IS THE LAB -- THE STATE
09:24AM 8 CANCELLED THE CONTRACT BECAUSE THE LAB HAD A CHECKERED PAST,
09:24AM 9 BUT IT'S REALLY THE FOCUS ON WHAT DR. ROSENDORFF IS MOTIVATED
09:24AM 10 BY AND HIS BIAS.

09:24AM 11 THE COURT: AND THE PROBLEM IS, THOSE ARE NOT
09:24AM 12 ATTENUATED. ALL OF THOSE SEEM TO BE CONNECTED IN SOME WAY THAT
09:24AM 13 WOULD, FROM A 403 ANALYSIS, WOULD REQUIRE US TO LOOK INTO
09:24AM 14 REASON, REASON, REASON, AND THEN ULTIMATELY YOUR REASON,
09:24AM 15 DR. ROSENDORFF.

09:24AM 16 AND THAT SEEMS TO ME TO BE A MINI TRIAL. WE'VE USED THAT
09:24AM 17 PHRASE. AND THE -- WHATEVER PROBATIVE VALUE THAT THAT RAISES
09:24AM 18 FROM YOUR PERSPECTIVE THAT HE WANTS TO DISTANCE HIMSELF FROM A
09:24AM 19 FORMER EMPLOYER IS OUTWEIGHED BY THE TIME THAT WE WOULD HAVE TO
09:24AM 20 INVEST IN THAT, AND ALSO ANY POTENTIAL UNFAIR PREJUDICE WITHOUT
09:25AM 21 HAVING TO GO THROUGH A COMPLETE, A COMPLETE REVIEW OF ALL OF
09:25AM 22 THAT PROCESS.

09:25AM 23 I JUST CAN -- AT LEAST BASED ON WHAT YOU'VE TOLD ME TODAY,
09:25AM 24 I'M NOT GOING TO PERMIT IT.

09:25AM 25 MR. COOPERSMITH: OKAY. THANK YOU, YOUR HONOR. I

09:25AM 1 UNDERSTAND.

09:25AM 2 THE NEXT MATTER IS THE COURT MAY RECALL THAT ON DIRECT

09:25AM 3 EXAMINATION -- AND THE TRANSCRIPT PAGE FROM THIS TRIAL IS 3243

09:25AM 4 TO 3244 -- DR. ROSENDORFF TESTIFIED THAT VALIDATIONS ARE RUN BY

09:25AM 5 R&D SCIENTISTS FOR THE MOST PART, WHO DO NOT HAVE ANY

09:25AM 6 PROFESSIONAL RESPONSIBILITY TO REPRESENT DATA ACCURATELY IN THE

09:25AM 7 VALIDATION.

09:25AM 8 AND THEN AGAIN ON DIRECT AT PAGE 3262, DR. ROSENDORFF SAYS

09:25AM 9 THAT HE FELT LIKE R&D WAS BEING PRESSURED TO PRODUCE DATA THAT

09:25AM 10 INDICATED A CERTAIN RESULT, AND HE WASN'T SURE -- ENTIRELY SURE

09:25AM 11 HE COULD TRUST WHAT HE WAS LOOKING AT, BUT HE DECIDED TO TRUST.

09:25AM 12 AND THEN ON CROSS I ASKED HIM A QUESTION, AFTER HE RAISED

09:26AM 13 THIS ISSUE AGAIN ABOUT TRUSTING DATA, I ASKED HIM IF IT WAS

09:26AM 14 PREPARED BY RESEARCH AND DEVELOPMENT SCIENTISTS, AND HE SAID

09:26AM 15 CORRECT.

09:26AM 16 AND THEN I SAID, YOU DIDN'T HAVE ANY REASON TO THINK WHAT

09:26AM 17 THEY WERE PRESENTING WAS NOT TRUTHFUL?

09:26AM 18 AND HE SAID, I DIDN'T AT THE TIME. I DO NOW.

09:26AM 19 THAT WAS HIS TESTIMONY.

09:26AM 20 AND THE REASON I'M RAISING THIS WITH THE COURT IS THAT I

09:26AM 21 DON'T BELIEVE THAT DR. ROSENDORFF HAS ANY PERCIPIENT KNOWLEDGE

09:26AM 22 OF SOME FALSE DATA THAT HE RECEIVED FROM RESEARCH AND

09:26AM 23 DEVELOPMENT TO PREPARE VALIDATION REPORTS OR APPROVE THEM.

09:26AM 24 AND, YOU KNOW, IF HE HAD THAT PERCIPIENT KNOWLEDGE, I

09:26AM 25 THINK WE WOULD HAVE SEEN IT IN VOLUMINOUS DISCOVERY WE HAVE

09:26AM 1 RECEIVED ABOUT DR. ROSENDORFF.

09:26AM 2 SO MY POINT IN RAISING THIS, YOUR HONOR, IS THAT I DON'T

09:26AM 3 THINK THE PROSECUTION SHOULD BE PERMITTED TO ASK QUESTIONS

09:26AM 4 ABOUT WHY HE NOW BELIEVES, YEARS AFTER THE FACT, THAT HE MIGHT

09:26AM 5 HAVE RECEIVED DATA THAT HE DOESN'T BELIEVE IS TRUTHFUL OR

09:27AM 6 ANYTHING LIKE THAT, UNLESS THE GOVERNMENT CAN MAKE A PROFFER

09:27AM 7 THAT HE ACTUALLY HAD PERCIPIENT KNOWLEDGE WHILE HE WAS AT

09:27AM 8 THERANOS IF THAT'S THE CASE.

09:27AM 9 BECAUSE OBVIOUSLY THERE'S BEEN ALL SORTS OF NEWS REPORTS

09:27AM 10 AND TESTIMONY HE HAS GIVEN, AND HE MAY HAVE -- HE MAY BELIEVE

09:27AM 11 HE HAS OTHER SOURCES OF INFORMATION.

09:27AM 12 AND I JUST WANT TO -- AND MAYBE THE GOVERNMENT DOESN'T

09:27AM 13 PLAN TO ELICIT THAT ON REDIRECT, BUT I THOUGHT I WOULD RAISE

09:27AM 14 THAT.

09:27AM 15 THE COURT: MR. BOSTIC.

09:27AM 16 MR. BOSTIC: SO, YOUR HONOR, THE REDIRECT IS

09:27AM 17 STILL -- IT'S NOT FINALIZED BECAUSE THE CROSS IS NOT FINISHED,

09:27AM 18 BUT IF THE GOVERNMENT DOES GO INTO THAT TOPIC, IT WON'T BE TO

09:27AM 19 ELICIT FURTHER TESTIMONY ABOUT REASONS WHY DR. ROSENDORFF MIGHT

09:27AM 20 THINK THAT SOMEONE IN R&D WAS DISHONEST WITH HIM.

09:27AM 21 I HAVE NO INTENTION OF PURSUING THAT.

09:27AM 22 I THINK TO THE EXTENT DR. ROSENDORFF HAS DIFFERENT VIEWS

09:27AM 23 OF THE VALIDATION REPORTS NOW THAN HE DID WHEN HE SIGNED THEM

09:27AM 24 OR HAD DIFFERENT VIEWS WHEN HE LEFT THE COMPANY OF THOSE

09:27AM 25 VALIDATION REPORTS VERSUS WHEN HE SIGNED THEM, I THINK WE ARE

09:27AM 1 ENTITLED TO EXPLORE THAT, AND I THINK ONE RELEVANT FACT, ONE

09:28AM 2 THING THAT HE DID OBSERVE IS THE PRESSURE THAT HE REFERENCED

09:28AM 3 FROM MR. BALWANI AND OTHERS ON R&D TO ACHIEVE CERTAIN RESULTS.

09:28AM 4 SO I THINK IT IS APPROPRIATE TO ASK HIM FOLLOW-UP

09:28AM 5 QUESTIONS, IF THERE ARE ANY, ABOUT WHAT HE OBSERVED WITH

09:28AM 6 RESPECT TO THAT PRESSURE, AND HOW THAT MAY HAVE OR MAY NOT HAVE

09:28AM 7 AFFECTED HIS VIEW OF THE VALIDATION REPORTS THEMSELVES.

09:28AM 8 THE COURT: IN HINDSIGHT YOU MEAN?

09:28AM 9 MR. BOSTIC: YES, YOUR HONOR, IN LIGHT OF WHAT HE

09:28AM 10 SUBSEQUENTLY OBSERVED WITH THE PERFORMANCE OF THE ASSAYS AT THE

09:28AM 11 COMPANY.

09:28AM 12 MR. COOPERSMITH: AND, YOUR HONOR, MY QUARREL IS NOT

09:28AM 13 WITH DRAWING OUT FROM DR. ROSENDORFF, WHICH, YOU KNOW, THE

09:28AM 14 GOVERNMENT HAS ALREADY DONE ON DIRECT, THAT AS HE CONTINUED TO

09:28AM 15 WORK AT THERANOS, HE RECEIVED INFORMATION ABOUT THE PERFORMANCE

09:28AM 16 OF TESTS THAT, YOU KNOW, HE THOUGHT WAS IMPORTANT TO NOTE IN

09:28AM 17 ADDITION TO THE VALIDATION, PROVING ASSAYS AT THE TIME OF

09:28AM 18 VALIDATION.

09:28AM 19 MY ONLY ISSUE IS THAT, AND IT SOUNDS LIKE WE'RE IN

09:29AM 20 AGREEMENT ON THIS POINT, THAT THE GOVERNMENT CAN'T DRAW OUT,

09:29AM 21 DR. ROSENDORFF, WHY DID YOU -- WHAT INFORMATION DO YOU HAVE NOW

09:29AM 22 THAT YOU THINK THE DATA THAT YOU GOT FROM RESEARCH AND

09:29AM 23 DEVELOPMENT WAS SOMEHOW FALSE OR INACCURATE DATA?

09:29AM 24 YOU KNOW, THAT'S -- AND IT SOUNDS LIKE MR. BOSTIC DOESN'T

09:29AM 25 INTEND TO DO THAT.

09:29AM 1 BUT WHAT MR. BOSTIC HAS NOW STATED HE DOES INTEND TO
09:29AM 2 INQUIRE INTO, THAT'S NOT MY POINT. AND IF DR. ROSENDORFF HAD
09:29AM 3 PERCIPIENT KNOWLEDGE AT THERANOS THAT HE WANTED TO EXPLAIN OR
09:29AM 4 WHETHER IT'S ABOUT PRESSURE, HE CAN DO THAT.

09:29AM 5 THE COURT: ARE YOU SAYING IF THE QUESTION POSED TO
09:29AM 6 HIM ON REDIRECT IS, WHAT FORMS THE BASIS OF THAT OPINION?

09:29AM 7 MR. COOPERSMITH: RIGHT. OR EVEN QUESTIONS DESIGNED
09:29AM 8 TO SUGGEST THAT THE DATA THAT UNDERLIES THE VALIDATIONS WAS
09:29AM 9 INACCURATE OR UNTRUTHFUL OR, YOU KNOW, SOME KIND OF FRAUD
09:29AM 10 PERPETRATED ON HIM WHEN HE SIGNED THE VALIDATION REPORTS, THOSE
09:29AM 11 QUESTIONS DESIGNED TO ASK THAT OR EVEN GETTING HIM TO EXPLAIN,
09:29AM 12 OKAY, WHAT DOES DR. ROSENDORFF BELIEVE NOW ABOUT THE QUALITY OR
09:30AM 13 THE INTEGRITY OF THE DATA I SHOULD SAY. THAT'S THE ONLY THING
09:30AM 14 THAT I THINK IS OFF LIMITS.

09:30AM 15 EVERYTHING ELSE ABOUT WHAT HE OBSERVED AND WHETHER HE
09:30AM 16 THOUGHT THE ASSAYS WERE PERFORMING WELL AND WHETHER THE
09:30AM 17 VALIDATION REPORTS TELL THE WHOLE STORY AND WHETHER YOU ALSO
09:30AM 18 HAVE TO LOOK AT PERFORMANCE AFTER VALIDATION, THE GOVERNMENT
09:30AM 19 HAS ALREADY DONE THAT, AND IF THEY WANT TO DO IT AGAIN, THAT'S
09:30AM 20 NOT THE ISSUE, RIGHT?

09:30AM 21 THE COURT: AND SO IF THE QUESTION IS, YOU'VE TOLD
09:30AM 22 US NOW, LOOKING BACK NOW, AND IF THE QUESTION IS, WHAT FORMS
09:30AM 23 THAT OPINION, THAT'S OKAY?

09:30AM 24 MR. COOPERSMITH: IF, IF, IF HE'S ASKED, LOOKING
09:30AM 25 BACK NOW, WHAT FORMS YOUR OPINION THAT THE DATA THAT YOU

09:30AM 1 RECEIVED FROM RESEARCH AND DEVELOPMENT WAS INACCURATE OR LACKED
09:30AM 2 INTEGRITY OR WAS FALSE OR SOMETHING LIKE THAT, THAT'S NOT OKAY
09:30AM 3 FROM MY PERSPECTIVE BECAUSE I DON'T THINK HE HAS PERCIPIENT
09:30AM 4 KNOWLEDGE OF THAT ISSUE.

09:30AM 5 HE MAY WELL HAVE PERCIPIENT KNOWLEDGE ABOUT HOW THE
09:30AM 6 ASSAYS -- IN FACT, I THINK HE DOES -- HOW THE ASSAYS PERFORMED
09:30AM 7 WHILE HE WAS AT THERANOS.

09:31AM 8 BUT I DON'T BELIEVE, FROM ALL OF THE DISCOVERY THAT I HAVE
09:31AM 9 RECEIVED, HE HAS PERCIPIENT KNOWLEDGE ABOUT DATA BEING
09:31AM 10 FALSIFIED OR LACKING INTEGRITY AND THAT HE GOT FROM OTHER
09:31AM 11 RESEARCH AND DEVELOPMENT SCIENTISTS.

09:31AM 12 HE TESTIFIED HE DIDN'T GET THE DATA FROM MR. BALWANI, HE
09:31AM 13 GOT IT FROM THE R&D DEPARTMENT.

09:31AM 14 SO THAT'S THE ONLY THING THAT I THINK CAN'T BE ASKED IN
09:31AM 15 HINDSIGHT OR NOT. IT'S NOT SOMETHING THAT REALLY WAS BASED ON
09:31AM 16 HIS EXPERIENCE AT THERANOS.

09:31AM 17 THE COURT: OKAY.

09:31AM 18 MR. BOSTIC.

09:31AM 19 MR. BOSTIC: SO I WON'T ASK HIM TO SPECULATE AS TO
09:31AM 20 WHETHER ANYONE IN R&D MIGHT HAVE HAD, YOU KNOW, NEFARIOUS
09:31AM 21 MOTIVES IN FALSIFYING INFORMATION.

09:31AM 22 I WILL TRY TO CRAFT MY QUESTIONS TO AVOID ELICITING THAT.

09:31AM 23 DR. ROSENDORFF WILL ANSWER THE QUESTIONS AS BEST HE CAN.

09:31AM 24 I THINK THAT WHAT HAPPENED HERE IS THERE'S A DISCONNECT
09:31AM 25 OBVIOUSLY BETWEEN THE VALIDATION REPORTS, WHICH WERE SUFFICIENT

09:31AM 1 FOR DR. ROSENDORFF TO SIGN AND APPROVE THE TESTS, AND THEN THE
09:32AM 2 SUBSEQUENT PERFORMANCE, AND IN EXPLAINING THAT DISCONNECT, THE
09:32AM 3 FACT THAT THE VALIDATION DATA LOOKED OKAY, WHEREAS THE ASSAYS
09:32AM 4 PERFORMED BADLY IN THE CLINICAL SETTING, I THINK THERE ARE
09:32AM 5 SEVERAL RELEVANT FACTS, INCLUDING THE FACT THAT THE VALIDATION
09:32AM 6 WAS RUSHED, THE FACT THAT MANAGEMENT APPLIED PRESSURE ON R&D TO
09:32AM 7 GET THAT VALIDATION DONE.

09:32AM 8 I THINK IN DR. ROSENDORFF'S MIND THAT COULD PROPERLY FORM
09:32AM 9 THE BASIS OF WHY HE VIEWS THOSE VALIDATION REPORTS DIFFERENTLY
09:32AM 10 NOW FROM BACK THEN.

09:32AM 11 THE COURT: AND YOU DON'T PART COMPANY WITH HIM
09:32AM 12 EXPRESSING --

09:32AM 13 MR. COOPERSMITH: THAT'S NOT MY QUARREL, YOUR HONOR.
09:32AM 14 THE ISSUE WAS SOLELY ON WHETHER THE DATA WAS FALSE.
09:32AM 15 AND HE MIGHT HAVE SOME SPECULATIVE, YOU KNOW, VIEWS, THAT,
09:32AM 16 WELL, IF IN HIS VIEW THE ASSAYS DIDN'T PERFORM AS HE THOUGHT
09:32AM 17 THEY SHOULD HAVE AFTER VALIDATION, THEN THAT MUST MEAN THAT THE
09:32AM 18 DATA IS FALSE, THAT'S NOT -- I DON'T THINK THAT SHOULD BE
09:32AM 19 PERMISSIBLE BECAUSE THAT'S SPECULATION.

09:32AM 20 OR BY THE SAME TOKEN, IF HE THINKS HE'S ACQUIRED OTHER
09:32AM 21 KNOWLEDGE, YOU KNOW, AFTER HE LEFT THERANOS THAT MAKES HIM
09:33AM 22 BELIEVE DATA WAS FALSIFIED. IT'S JUST ABOUT THE FALSIFIED
09:33AM 23 ISSUE.

09:33AM 24 IF MR. BOSTIC WANTS TO GO INTO AGAIN HIS VIEWS ABOUT
09:33AM 25 WHETHER THE ASSAYS PERFORMED AS HE WOULD HAVE EXPECTED AFTER

09:33AM 1 VALIDATION, THAT'S NOT MY QUARREL.

09:33AM 2 THE COURT: OKAY. ALL RIGHT. THANK YOU FOR THAT.

09:33AM 3 YOU ALSO FILED LAST NIGHT, AT 10:25, DOCUMENT 1413. AND

09:33AM 4 YOU ASKED FOR A HEARING AT 2:00 P.M. TODAY ON THIS.

09:33AM 5 MR. COOPERSMITH: WELL, YES, OBVIOUSLY SUBJECT TO

09:33AM 6 THE COURT'S SCHEDULING CONCERNS AND WHENEVER THE COURT CAN HEAR

09:33AM 7 IT.

09:33AM 8 THAT IS A MOTION THAT WE FILED. IT RELATES TO A WITNESS

09:33AM 9 THAT WE EXPECT WILL BE CALLED BY THE GOVERNMENT NAMED

09:33AM 10 SUNIL DHAWAN WHO THE COURT MIGHT BE FAMILIAR WITH.

09:33AM 11 SO, MS. WALSH WILL ARGUE THAT PARTICULAR MOTION.

09:33AM 12 THE COURT: OKAY.

09:33AM 13 MR. COOPERSMITH: BUT THERE ARE A COUPLE OF OTHER

09:33AM 14 THINGS, YOUR HONOR, THREE OTHER THINGS ACTUALLY, WITH RESPECT

09:33AM 15 TO A WITNESS WHO WILL TESTIFY EVEN BEFORE DR. DHAWAN. I'VE

09:34AM 16 RAISED THESE ISSUES WITH MR. LEACH. AND THE WITNESS IS

09:34AM 17 LISA PETERSON, WHO I THINK IS THE NEXT WITNESS AFTER

09:34AM 18 DR. ROSENDORFF.

09:34AM 19 AND THERE ARE THREE ISSUES THAT I THINK WE NEED TO GO INTO

09:34AM 20 BEFORE THAT WITNESS TAKES THE STAND, WHICH MIGHT WELL BE

09:34AM 21 SOMETIME IN THE LATE MORNING, DEPENDING ON HOW LONG

09:34AM 22 MR. BOSTIC'S REDIRECT IS.

09:34AM 23 THE COURT: OKAY. WELL, LET ME ASK A QUESTION ABOUT

09:34AM 24 TIMING AND WHERE WE ARE.

09:34AM 25 DR. ROSENDORFF IS STILL ON CROSS?

09:34AM 1 MR. COOPERSMITH: YES, YOUR HONOR.

09:34AM 2 THE COURT: AND WHAT IS YOUR TIME ESTIMATE?

09:34AM 3 MR. COOPERSMITH: VERY SHORT, YOUR HONOR.

09:34AM 4 THE COURT: OKAY. AND THEN WE'LL BE DONE WITH HIM

09:34AM 5 BY OUR FIRST BREAK DO YOU THINK, OR --

09:34AM 6 MR. BOSTIC: I WOULD THINK SO, YOUR HONOR. I WOULD

09:34AM 7 THINK THE REDIRECT WOULD BE LESS THAN AN HOUR.

09:34AM 8 THE COURT: OKAY. AND THEN MS. PETERSON WOULD BE

09:34AM 9 YOUR NEXT WITNESS?

09:34AM 10 MR. BOSTIC: YES, YOUR HONOR.

09:34AM 11 THE COURT: RIGHT. SO WHEN SHOULD WE DISCUSS

09:34AM 12 MS. PETERSON? SHOULD WE DO THAT AT OUR BREAK?

09:34AM 13 MR. COOPERSMITH: THAT WOULD BE FINE, YOUR HONOR.

09:34AM 14 THE COURT: RIGHT.

09:34AM 15 MR. COOPERSMITH: I DON'T KNOW IF THE BREAK IS AT

09:34AM 16 11:30.

09:34AM 17 THE COURT: PROBABLY. WE'RE GETTING A VERY LATE

09:35AM 18 START, LATER THAN I WOULD HAVE LIKED, AND I HAD SOME OTHER

09:35AM 19 MATTERS I HAD TO DEAL WITH.

09:35AM 20 SO PROBABLY 11:30, NOON, SOMETHING LIKE THAT.

09:35AM 21 MR. COOPERSMITH: RIGHT. I'M JUST NOT SURE WE'LL

09:35AM 22 MAKE IT THAT FAR, BECAUSE LITERALLY MY ADDITIONAL CROSS OF

09:35AM 23 DR. ROSENDORFF MIGHT BE, YOU KNOW, 15 OR 20 MINUTES.

09:35AM 24 MR. BOSTIC HAS UNDER AN HOUR APPARENTLY, SO WE MAY NOT

09:35AM 25 EVEN HAVE TO MAKE IT TO THE BREAK BEFORE WE HAVE TO CALL

09:35AM 1 ANOTHER WITNESS.

09:35AM 2 THE COURT: OKAY. WELL, WE CAN -- YOU KNOW, WHY

09:35AM 3 DON'T WE BRING THE JURY OUT, LET'S JUST START WITH

09:35AM 4 DR. ROSENDORFF AND SEE WHERE WE GO WHERE WITH HIM, AND IF WE

09:35AM 5 NEED TO TAKE ANOTHER BREAK, I THINK THE JURY IS KIND OF USED TO

09:35AM 6 THAT.

09:35AM 7 MR. COOPERSMITH: YES, YOUR HONOR. OKAY. THANK

09:35AM 8 YOU.

09:35AM 9 THE COURT: GREAT.

09:35AM 10 AND THEN WE'LL -- THE ISSUE REGARDING DOCUMENT 1413, IT

09:35AM 11 SOUNDS LIKE WE CAN DEFER THAT.

09:35AM 12 MS. PETERSON'S TESTIMONY WILL BE HALF A DAY, A DAY? DO WE

09:35AM 13 KNOW ABOUT THAT? ANY ESTIMATE ABOUT --

09:35AM 14 MR. BOSTIC: I THINK THE GOVERNMENT ANTICIPATES THAT

09:36AM 15 THAT WITNESS WILL OCCUPY THE BALANCE OF THE DAY.

09:36AM 16 THE COURT: I SEE. OKAY. OKAY. FAIR ENOUGH.

09:36AM 17 AND THEN WE CAN HEAR FROM MS. WALSH AND HER MOTION MAYBE

09:36AM 18 TOMORROW SOMETIME IF THAT WORKS OKAY WITH YOU.

09:36AM 19 MR. COOPERSMITH: THAT SOUNDS GREAT.

09:36AM 20 THE COURT: OKAY. GREAT. THANK YOU.

09:36AM 21 MR. BOSTIC: THANK YOU, YOUR HONOR.

09:36AM 22 (RECESS FROM 9:36 A.M. UNTIL 9:40 A.M.)

09:40AM 23 (JURY IN AT 9:40 A.M.)

09:41AM 24 THE COURT: THANK YOU. PLEASE BE SEATED. THANK YOU

09:41AM 25 AGAIN FOR YOUR COURTESY.

09:41AM 1 WE ARE BACK ON THE RECORD. OUR JURY IS PRESENT.

09:41AM 2 DR. ROSENDORFF IS PRESENT.

09:41AM 3 SIR, I'LL REMIND YOU THAT YOU ARE STILL UNDER OATH.

09:41AM 4 ALL COUNSEL ARE PRESENT.

09:41AM 5 MR. BALWANI IS PRESENT.

09:41AM 6 **(GOVERNMENT'S WITNESS, ADAM ROSENDORFF, PREVIOUSLY WAS**

09:41AM 7 **SWORN.)**

09:41AM 8 THE COURT: LADIES AND GENTLEMEN, GOOD MORNING.

09:41AM 9 I'M SEEING A DIFFERENT PERSPECTIVE OF OUR JURY. WE'VE

09:41AM 10 DONE THE LINE CHANGE. SO WE'VE ADJUSTED SEATING. I HOPE THAT

09:42AM 11 WORKS FOR YOU.

09:42AM 12 LET ME ASK THE JURY, MR. COOPERSMITH, BEFORE YOU BEGIN

09:42AM 13 YOUR EXAMINATION, DURING THE BREAK, DID ANYONE HAVE CAUSE TO

09:42AM 14 READ, LEARN, LISTEN, DISCUSS, OR SEE ANYTHING ABOUT THIS CASE?

09:42AM 15 IF SO, PLEASE RAISE YOUR HAND.

09:42AM 16 I SEE NO HANDS. THANK YOU VERY MUCH.

09:42AM 17 I APPRECIATE THAT.

09:42AM 18 MR. COOPERSMITH, YOU'D LIKE TO CONTINUE WITH YOUR

09:42AM 19 EXAMINATION?

09:42AM 20 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

09:42AM 21 ONE MATTER, YOUR HONOR. WE HAD DISCUSSED LAST FRIDAY

09:42AM 22 EXHIBIT 9939, AND THAT WAS AN EXHIBIT CONDITIONALLY ADMITTED

09:42AM 23 EARLIER IN THE TRIAL, AND WE WOULD MOVE FOR THE FULL ADMISSION

09:42AM 24 OF THAT EXHIBIT.

09:42AM 25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU

09:42AM 1 MAY RECALL THERE WAS AN EXHIBIT 9939 THAT THE COURT ADMITTED
09:42AM 2 CONDITIONALLY, AND THAT EXHIBIT I TOLD YOU WAS ADMITTED SUBJECT
09:42AM 3 TO A FOUNDATION BEING LAID.
09:43AM 4 I TOLD YOU THAT IF THE FOUNDATION WAS NOT LAID, THE COURT
09:43AM 5 WOULD STRIKE THE EXHIBIT AND ANY TESTIMONY ABOUT IT.
09:43AM 6 THERE HAS BEEN SUFFICIENT EVIDENCE RAISED, AND SO THAT
09:43AM 7 EXHIBIT IS ADMITTED WITHOUT ANY CONDITIONS.
09:43AM 8 MR. COOPERSMITH: THANK YOU, YOUR HONOR.
09:43AM 9 (DEFENDANT'S EXHIBIT 9939 WAS RECEIVED IN EVIDENCE.)
09:43AM 10 THE COURT: YOU'RE WELCOME.
09:43AM 11 **CROSS-EXAMINATION (RESUMED)**
09:43AM 12 BY MR. COOPERSMITH:
09:43AM 13 Q. AND GOOD MORNING, DR. ROSENDORFF.
09:43AM 14 A. GOOD MORNING.
09:43AM 15 Q. SO AS OF TODAY, YOU STILL WORK IN THE LAB INDUSTRY; IS
09:43AM 16 THAT CORRECT?
09:43AM 17 A. CORRECT.
09:43AM 18 Q. AND YOU'RE A LAB DIRECTOR?
09:43AM 19 A. CORRECT.
09:43AM 20 Q. OKAY. DR. ROSENDORFF, DO YOU REMEMBER ON FRIDAY I ASKED
09:43AM 21 YOU SOME QUESTIONS ABOUT THE INITIAL LAUNCH OF THERANOS BLOOD
09:43AM 22 TESTING SERVICES AT WALGREENS?
09:43AM 23 A. YES.
09:43AM 24 Q. AND I ASKED YOU IN PARTICULAR ABOUT SOME QUESTIONS THAT
09:43AM 25 YOU HAD BEEN ASKED ON DIRECT EXAMINATION BY MR. BOSTIC ABOUT

09:43AM 1 THAT LAUNCH.

09:43AM 2 DO YOU REMEMBER THAT?

09:43AM 3 A. YES. I BELIEVE THERE WAS A DISTINCTION BEING MADE BETWEEN
09:44AM 4 A PUBLIC LAUNCH AND A FRIENDS AND FAMILY LAUNCH.

09:44AM 5 Q. YES, YES.

09:44AM 6 A. OKAY.

09:44AM 7 Q. AND, IN FACT, YOU RECALL THAT ON WEDNESDAY LAST WEEK

09:44AM 8 DURING YOUR DIRECT EXAMINATION, MR. BOSTIC ASKED YOU ABOUT
09:44AM 9 WHETHER THERE WAS A LAUNCH TO THE GENERAL PUBLIC ON

09:44AM 10 SEPTEMBER 9TH OF 2013.

09:44AM 11 DO YOU RECALL THAT?

09:44AM 12 A. YES.

09:44AM 13 Q. AND THEN ON CROSS, WE TALKED ABOUT THE FRIENDS AND FAMILY
09:44AM 14 LAUNCH THAT OCCURRED ON SEPTEMBER 9TH.

09:44AM 15 DO YOU REMEMBER THAT?

09:44AM 16 A. YES.

09:44AM 17 Q. OKAY. AND YOU TOLD THE GOVERNMENT ABOUT THE LAUNCH BEING
09:44AM 18 ONLY OPEN TO FRIENDS AND FAMILY AND NOT TO THE GENERAL PUBLIC
09:44AM 19 BACK IN 2018; CORRECT?

09:44AM 20 A. I DON'T RECALL, SIR.

09:44AM 21 Q. OKAY. SO LET ME SEE IF I CAN REFRESH YOUR MEMORY.

09:44AM 22 COULD YOU TAKE A LOOK AT EXHIBIT 28408, WHICH IS IN ONE OF
09:44AM 23 THE TESTIMONY BINDERS THAT YOU SHOULD HAVE. 28408.

09:45AM 24 A. SO I ONLY HAVE ONE TESTIMONY BINDER. IT SAYS WITNESS
09:45AM 25 BINDER, I BELIEVE.

09:45AM 1 YOU'RE REFERRING TO THE U.S.A. VERSUS BALWANI BINDER. I'M
09:45AM 2 SORRY.
09:45AM 3 28 --
09:45AM 4 Q. YES.
09:45AM 5 A. AND ANY IDEA WHICH ONE THAT SHOULD BE IN?
09:45AM 6 Q. I THINK THERE SHOULD BE ONE LABELLED PRIOR TESTIMONY THAT
09:45AM 7 I'VE HANDED YOU. I KNOW IT'S BEEN A FEW DAYS.
09:46AM 8 A. NO.
09:46AM 9 Q. OKAY. YOU DON'T SEE IT?
09:46AM 10 A. NO.
09:46AM 11 Q. OKAY.
09:46AM 12 YOUR HONOR, MAY I SHOW THIS TO THE GOVERNMENT AND THEN
09:46AM 13 APPROACH THE WITNESS?
09:46AM 14 THE COURT: YES, YES.
09:46AM 15 MR. COOPERSMITH: (HANDING.)
09:46AM 16 Q. OKAY. DR. ROSENDORFF, I'VE HANDED YOU PAGES 82 AND 83 OF
09:46AM 17 SOME PRIOR TESTIMONY.
09:46AM 18 DO YOU SEE THAT?
09:46AM 19 A. YES, YES.
09:46AM 20 Q. AND YOU GAVE THAT TESTIMONY IN 2018?
09:46AM 21 A. YES.
09:46AM 22 Q. OKAY. AND DOES THAT REFRESH YOUR MEMORY THAT YOU TOLD THE
09:46AM 23 GOVERNMENT IN 2018 THAT THERE WAS A SOFT LAUNCH NOT OPEN TO THE
09:47AM 24 GENERAL PUBLIC?
09:47AM 25 A. YES.

09:47AM 1 Q. OKAY. THANK YOU. I CAN TAKE THAT BACK.

09:47AM 2 MAY I APPROACH, YOUR HONOR?

09:47AM 3 THE COURT: YES.

09:47AM 4 THE WITNESS: (HANDING.)

09:47AM 5 BY MR. COOPERSMITH:

09:47AM 6 Q. OKAY. DR. ROSENDORFF, DO YOU RECALL, AND YOU MIGHT NOT

09:47AM 7 REMEMBER THE NUMBER, BUT DURING YOUR DIRECT EXAMINATION YOU

09:47AM 8 WERE SHOWN EXHIBIT 1772, WHICH IS ALREADY IN EVIDENCE.

09:47AM 9 SO I THINK WE CAN JUST PUT THAT ON THE SCREEN WITH YOUR

09:47AM 10 PERMISSION, YOUR HONOR?

09:47AM 11 THE COURT: YES.

09:48AM 12 BY MR. COOPERSMITH:

09:48AM 13 Q. AND DO YOU SEE EXHIBIT 1772, DR. ROSENDORFF, ON THE SCREEN

09:48AM 14 IN FRONT OF YOU?

09:48AM 15 A. YES, I DO.

09:48AM 16 Q. AND THIS WAS A DISCUSSION THAT YOU WERE HAVING WITH

09:48AM 17 MR. BALWANI ABOUT THE SUBJECT OF ALIQUOTING BLOOD FROM

09:48AM 18 VACUTAINERS TO SMALLER DEVICES FOR TESTING ON EDISON?

09:48AM 19 A. YES.

09:48AM 20 Q. AND LOOKING AT THE EMAIL THAT YOU SENT ON JUNE 11TH, 2014,

09:48AM 21 AT 5:25 P.M., I'D JUST LIKE TO LOOK AT THE LAST -- THE SECOND

09:48AM 22 TO THE LAST SENTENCE OF YOUR EMAIL.

09:48AM 23 DO YOU SEE YOU SAY, "I'D LIKE TO PERHAPS SUSPEND

09:48AM 24 VACUTAINER ALIQUOTING UNTIL WE CAN GO TO 2 SHIFTS."

09:48AM 25 RIGHT?

09:48AM 1 A. YES. PERHAPS. I SAID PERHAPS, YES.

09:48AM 2 Q. RIGHT. AND WHAT YOU'RE COMMUNICATING THERE IS NOT TO STOP

09:48AM 3 ALIQUOTING ALTOGETHER, BUT TO SUSPEND IT UNTIL YOU CAN GET MORE

09:49AM 4 PERSONNEL TO WORK ON ADDITIONAL SHIFTS.

09:49AM 5 THAT'S WHAT YOU'RE SAYING IN THIS EMAIL; RIGHT?

09:49AM 6 A. NOT IN OTHER EMAILS.

09:49AM 7 Q. OKAY. I'M JUST LOOKING AT THIS EMAIL, SIR.

09:49AM 8 A. YES, THAT'S THE LITERAL MEANING OF THIS EMAIL.

09:49AM 9 Q. RIGHT. THAT WHEN OTHER PERSONNEL CAME TO MANAGE

09:49AM 10 ADDITIONAL SHIFTS, THEN IT COULD RESUME; RIGHT?

09:49AM 11 A. YES. IT WAS A SUGGESTION.

09:49AM 12 Q. OKAY. OKAY. AND DO YOU SEE MR. BALWANI WROTE ABOVE, "WE

09:49AM 13 NEED THIS MESS RESOLVED ASAP. I AM ASKING FOR MORE READERS FOR

09:49AM 14 OVER 2 WEEKS NOW AND WE HAVE A TOTAL OF 27

09:49AM 15 WORKING/READY/CALIBRATED EDISONS IN CLIA."

09:49AM 16 DO YOU SEE THAT?

09:49AM 17 A. YES.

09:49AM 18 Q. OKAY. SO NOW I'D LIKE TO SHOW YOU ANOTHER EXHIBIT THAT IS

09:49AM 19 PART OF THE SAME EMAIL STRING, AND THAT'S EXHIBIT 13888, AND

09:49AM 20 YOU SHOULD BE ABLE TO SEE THAT ON YOUR SCREEN IN A MINUTE.

09:50AM 21 (PAUSE IN PROCEEDINGS.)

09:50AM 22 THE WITNESS: DO YOU HAVE A QUESTION PENDING, SIR?

09:50AM 23 MR. COOPERSMITH: I'M ABOUT TO. SORRY FOR THE

09:50AM 24 DELAY.

09:50AM 25 THE WITNESS: NO PROBLEM.

09:50AM 1 BY MR. COOPERSMITH:

09:50AM 2 Q. DO YOU SEE ON EXHIBIT 13888 THERE'S THE SAME EMAIL THAT WE

09:50AM 3 JUST DISCUSSED ON THE BOTTOM EMAIL ON THE FIRST PAGE?

09:50AM 4 A. YES.

09:50AM 5 Q. AND THEN THERE'S A RESPONSE FROM MR. BALWANI TO THAT

09:50AM 6 EMAIL, WHICH IS DIFFERENT FROM THE RESPONSE THAT WE JUST SAW;

09:50AM 7 RIGHT?

09:50AM 8 A. IT'S A CLARIFICATION OF A STRATEGY WHERE IF WE DID GO BACK

09:50AM 9 TO ALIQUOTING, HOW WE WOULD GO ABOUT DOING THAT.

09:51AM 10 Q. RIGHT. SO ACTUALLY THE SAME EMAIL THAT YOU WROTE THAT WE

09:51AM 11 JUST DISCUSSED, MR. BALWANI RESPONDED TWICE, AND THEN ONE OF

09:51AM 12 THEM, AS YOU JUST SAID, WAS A CLARIFICATION.

09:51AM 13 IS THAT FAIR?

09:51AM 14 A. YEAH. I BELIEVE IN OTHER EMAILS I MORE STRONGLY SUGGESTED

09:51AM 15 THAT WE SHOULD DISCONTINUE THIS PRACTICE.

09:51AM 16 Q. OKAY. BUT I'M ASKING ABOUT THESE EMAILS, SIR.

09:51AM 17 A. YES.

09:51AM 18 Q. AND YOU SEE THERE'S TWO DIFFERENT RESPONSES MR. BALWANI

09:51AM 19 MADE TO THE SAME EMAIL; RIGHT?

09:51AM 20 A. I'M SORRY. I MISUNDERSTOOD.

09:51AM 21 THIS -- AT THE TOP IS MR. BALWANI'S INSTRUCTIONS ABOUT HOW

09:51AM 22 THIS WOULD HAPPEN.

09:51AM 23 Q. OKAY.

09:51AM 24 A. NOT A SUGGESTION FROM ME.

09:51AM 25 Q. OKAY. WHY DON'T WE JUST LOOK AT IT.

09:51AM 1 YOUR HONOR, WE OFFER EXHIBIT 13888.

09:51AM 2 MR. BOSTIC: NO OBJECTION.

09:51AM 3 THE COURT: IT'S ADMITTED AND IT MAY BE PUBLISHED.

09:51AM 4 (DEFENDANT'S EXHIBIT 13888 WAS RECEIVED IN EVIDENCE.)

09:51AM 5 BY MR. COOPERSMITH:

09:51AM 6 Q. OKAY. DR. ROSENDORFF, DO YOU SEE ON THE BOTTOM OF THE

09:51AM 7 FIRST PAGE THERE'S THE SAME EMAIL THAT WE WERE LOOKING AT WHEN

09:52AM 8 WE WERE DISCUSSING 1772?

09:52AM 9 A. YES.

09:52AM 10 Q. AND THAT'S YOUR EMAIL, AND IT TALKS ABOUT THE "SUSPEND

09:52AM 11 VACUTAINER ALIQUOTING UNTIL WE CAN GO TO 2 SHIFTS."

09:52AM 12 DO YOU SEE THAT?

09:52AM 13 A. YES.

09:52AM 14 Q. AND THEN LET'S GO TO MR. BALWANI'S ADDITIONAL RESPONSE.

09:52AM 15 SO HE SAYS, "ADAM. WE WON'T ALIQUOT THE HIGH VOLUME TESTS

09:52AM 16 LIKE TSH FOR NOW AS YOU SUGGESTED AND RUN THEM UPSTAIRS. WE

09:52AM 17 WILL TWEAK THE SOFTWARE TO ALLOW US TO DO THAT. IN THE

09:52AM 18 MEANTIME WE WILL PUSH MORE DEVICES TO DONE. THE DRIVING FACTOR

09:52AM 19 WILL BE NO BACKLOG OR DELAY IN PATIENT SAMPLES TAT."

09:52AM 20 DO YOU SEE THAT?

09:52AM 21 A. YES.

09:52AM 22 Q. AND SO THAT'S MR. BALWANI'S CLARIFICATION AS YOU PUT IT?

09:52AM 23 A. YES.

09:52AM 24 Q. ALL RIGHT. SO WHEN YOU WERE ON DIRECT EXAMINATION, YOU

09:52AM 25 REMEMBER MR. BOSTIC ASKED YOU IF MR. BALWANI'S SOLUTION TO WHAT

09:53AM 1 YOU EXPRESSED IN THIS EMAIL WAS TO MANUFACTURE OR PUT MORE
09:53AM 2 EDISONS ONLINE.
09:53AM 3 DO YOU REMEMBER THAT?
09:53AM 4 A. ARE YOU ASKING ME ABOUT WHAT ACTUALLY HAPPENED VERSUS HIS
09:53AM 5 STATED SOLUTION?
09:53AM 6 Q. I'M ASKING A DIFFERENT QUESTION. LET ME START AGAIN.
09:53AM 7 A. OKAY.
09:53AM 8 Q. SO ON DIRECT EXAMINATION, DO YOU RECALL THAT MR. BOSTIC
09:53AM 9 ASKED YOU ABOUT THIS PARTICULAR EMAIL, WHETHER MR. BALWANI'S
09:53AM 10 SOLUTION TO THE ISSUE THAT YOU RAISED WAS TO PUT MORE EDISONS
09:53AM 11 ONLINE.
09:53AM 12 DO YOU RECALL THAT?
09:53AM 13 A. YES.
09:53AM 14 Q. AND YOU SAID YES?
09:53AM 15 A. YES.
09:53AM 16 Q. OKAY. I'D LIKE TO SHOW YOU EXHIBIT 20279, WHICH IS
09:53AM 17 ALREADY IN EVIDENCE.
09:53AM 18 OKAY. DO YOU SEE ON THE FIRST PAGE THERE'S AN EMAIL
09:54AM 19 FROM -- WELL, IT'S AN EMAIL TO YOU.
09:54AM 20 DO YOU SEE THAT?
09:54AM 21 A. YES.
09:54AM 22 Q. AND IT'S ON MAY 30TH, 2014?
09:54AM 23 A. YES.
09:54AM 24 Q. AND IT'S A TRANSITION REPORT FROM DR. PANDORI?
09:54AM 25 A. YES.

09:54AM 1 Q. OKAY.

09:54AM 2 A. DO YOU KNOW IF THE TIMES MENTIONED ARE PACIFIC STANDARD

09:54AM 3 TIME OR GENERAL MEANTIME -- OR DO YOU KNOW WHAT THE TIME IS

09:54AM 4 REFERRED TO BY ANY CHANCE?

09:54AM 5 Q. I KNOW THAT -- WELL, YOU KNOW THAT SOMETIMES EMAILS ARE IN

09:54AM 6 THE -- IN PACIFIC TIME; RIGHT?

09:54AM 7 A. SURE.

09:54AM 8 Q. AND SOMETIMES THEY'RE IN WHAT IS CALLED UTC TIME; RIGHT?

09:54AM 9 A. THE -- IN MY EXPERIENCE, INTERNAL EMAILS IN COMPANIES I'VE

09:54AM 10 WORKED FOR IN CALIFORNIA ARE ALL ANNOTATED WITH PST.

09:54AM 11 Q. RIGHT. BUT YOU'VE CERTAINLY SEEN OCCASIONS IN YOUR

09:54AM 12 CAREER, AND INCLUDING AT THERANOS, WHERE EMAILS COME OUT IN UTC

09:54AM 13 TIME FOR VARIOUS REASONS; RIGHT?

09:55AM 14 A. I, I -- THAT'S NOT MY RECOLLECTION, THOUGH.

09:55AM 15 Q. OKAY. BUT IN ANY EVENT, THIS IS AN EMAIL THAT YOU

09:55AM 16 RECEIVED FROM DR. PANDORI; CORRECT?

09:55AM 17 A. IT APPEARS TO BE.

09:55AM 18 Q. OKAY. AND LET'S GO TO PAGE 6.

09:55AM 19 DO YOU SEE THERE'S A SECTION CALLED OTHER NOTES?

09:55AM 20 A. YES.

09:55AM 21 Q. AND DR. PANDORI WROTE THERE, "EDISONS: THE PRIMARY

09:55AM 22 CONCERN IN THIS SECTION IS THE AVAILABLE NUMBER OF DEVICES."

09:55AM 23 DO YOU SEE THAT?

09:55AM 24 A. YES.

09:55AM 25 Q. AND THEN HE WROTE, "FOR FT4, VITAMIN D, AND TSH, AT LEAST

09:55AM 1 A DOUBLING OF THE NUMBER OF UNITS IS NECESSARY, IN MY OPINION."

09:55AM 2 DO YOU SEE THAT?

09:55AM 3 A. YES, I DO.

09:55AM 4 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

09:55AM 5 THE COURT: NO FURTHER QUESTIONS?

09:55AM 6 MR. COOPERSMITH: ON CROSS, NO, YOUR HONOR.

09:56AM 7 THE COURT: THERE'S REDIRECT.

09:56AM 8 THE WITNESS: OKAY, EXCELLENT. THANK YOU.

09:56AM 9 THANK YOU, MR. COOPERSMITH.

09:56AM 10 MR. COOPERSMITH: YOU'RE WELCOME.

09:56AM 11 MR. BOSTIC: IF I COULD JUST HAVE A MOMENT TO GET

09:56AM 12 SET UP, YOUR HONOR?

09:56AM 13 THE COURT: YES.

09:56AM 14 (PAUSE IN PROCEEDINGS.)

09:56AM 15 **REDIRECT EXAMINATION**

09:56AM 16 BY MR. BOSTIC:

09:56AM 17 Q. GOOD MORNING, DR. ROSENDORFF.

09:56AM 18 A. GOOD MORNING, MR. BOSTIC.

09:56AM 19 Q. I'D LIKE TO ASK YOU JUST A FEW QUESTIONS ABOUT SOME TOPICS

09:56AM 20 THAT YOU DISCUSSED WITH MR. COOPERSMITH, AND IF WE COULD START

09:57AM 21 WITH THE LAUNCH IN SEPTEMBER 2013.

09:57AM 22 DO YOU HAVE THAT TIME PERIOD IN MIND?

09:57AM 23 A. YES.

09:57AM 24 Q. THERE'S BEEN SOME DISCUSSION ABOUT WHETHER THAT WAS A

09:57AM 25 LAUNCH TO THE PUBLIC AT LARGE OR TO THERANOS FRIENDS AND

09:57AM 1 FAMILY.

09:57AM 2 DO YOU REMEMBER THAT DISCUSSION?

09:57AM 3 A. YES, I DO.

09:57AM 4 Q. MY QUESTION IS, FROM THE PERSPECTIVE OF A LABORATORY

09:57AM 5 DIRECTOR, IS THERE A SIGNIFICANT DIFFERENCE BETWEEN THOSE TWO?

09:57AM 6 A. NO DIFFERENCE WHATSOEVER.

09:57AM 7 Q. CAN YOU EXPLAIN WHY A LAB DIRECTOR VIEWS THOSE TWO

09:57AM 8 SCENARIOS THE SAME?

09:57AM 9 A. IN BOTH THE SOFT AND A PUBLIC LAUNCH, THOSE TESTS ARE

09:57AM 10 PRESCRIBED AT THE DIRECTION OF A PHYSICIAN.

09:57AM 11 IN ADDITION, THOSE TESTS ARE -- THE RESULTS OF THOSE TESTS

09:57AM 12 ARE BEING USED TO MAKE HEALTH CARE DECISIONS, SOMETIMES VERY

09:57AM 13 IMPORTANT, CRITICAL HEALTH CONDITIONS.

09:57AM 14 AND THIRDLY, THOSE PEOPLE ARE STILL HUMAN BEINGS THAT

09:58AM 15 REQUIRE THE SAME DEGREE OF CARE AS WOULD THE PUBLIC.

09:58AM 16 Q. SO IN TERMS OF THE ACCURACY AND RELIABILITY OF CLINICAL

09:58AM 17 TESTING, ARE YOUR STANDARDS FOR ACCURACY AND RELIABILITY

09:58AM 18 RELAXED AT ALL IN A FRIENDS AND FAMILY LAUNCH SCENARIO?

09:58AM 19 A. NOT AT ALL. BUT THERE'S NO BETA TESTING IN HEALTH CARE.

09:58AM 20 Q. YOU ALSO DISCUSSED WITH DOCTOR -- OR MR. COOPERSMITH --

09:58AM 21 SORRY -- CONTINUOUS QUALITY CONTROL.

09:58AM 22 DO YOU REMEMBER THAT?

09:58AM 23 A. YES, I DID.

09:58AM 24 Q. CAN YOU EXPLAIN JUST BRIEFLY WHAT THE DIFFERENCE IS

09:58AM 25 BETWEEN DAILY QUALITY CONTROL AND CONTINUOUS QUALITY CONTROL?

09:58AM 1 A. SO NOT TO BE NITPICKY, BUT I THINK THE PHRASE IS
09:58AM 2 CONTINUOUS QUALITY IMPROVEMENT. IT'S A PRINCIPLE THAT ALMOST
09:58AM 3 ALL GOOD LABORATORIES FOLLOW WHERE YOU'RE JUST NOT LOOKING TO
09:58AM 4 FOLLOW THE LAW, YOU'RE LOOKING TO IMPROVE QUALITY AND PROCESSES
09:58AM 5 THROUGHOUT THE LIFE OF THE LAB.

09:59AM 6 Q. AND DO YOU RECALL A DISCUSSION WITH MR. COOPERSMITH ABOUT
09:59AM 7 SOMETHING CALLED LEVEY-JENNINGS AND THE WESTGARD RULES?

09:59AM 8 A. YES, I DO.

09:59AM 9 Q. AND IS THAT SOMETHING THAT TAKES PLACE OVER A PERIOD OF
09:59AM 10 TIME AS OPPOSED TO DAILY QUALITY CONTROL TESTING?

09:59AM 11 A. YES, IT DOES.

09:59AM 12 Q. ON DIRECT WE TALKED ABOUT SOME PROBLEMS THAT YOU OBSERVED
09:59AM 13 WITH THERANOS'S PERFORMANCE IN DAILY QUALITY CONTROL.

09:59AM 14 DO YOU RECALL THAT?

09:59AM 15 A. YES.

09:59AM 16 Q. WHEN IT COMES TO THIS KIND OF OVER TIME TRACKING OF
09:59AM 17 QUALITY CONTROL PERFORMANCE, I'M WONDERING WHETHER PERFORMANCE
09:59AM 18 OVER TIME CAN MAKE UP FOR BAD PERFORMANCE ON DAILY QUALITY
09:59AM 19 CONTROL.

09:59AM 20 DO YOU UNDERSTAND THAT QUESTION?

09:59AM 21 A. CAN I ASK YOU TO DIG INTO THAT A LITTLE BIT MORE?

09:59AM 22 Q. YES.

09:59AM 23 SO WE TALKED ABOUT PROBLEMS WITH DAILY QUALITY CONTROL
09:59AM 24 PROBLEMS AT THERANOS; RIGHT?

09:59AM 25 A. YES.

09:59AM 1 Q. IS THERE ANY WAY THAT LOOKING AT THE DATA OVER TIME COULD
10:00AM 2 REDEEM THAT PERFORMANCE?
10:00AM 3 IN OTHER WORDS --
10:00AM 4 MR. COOPERSMITH: OBJECTION. LEADING.
10:00AM 5 THE COURT: WHY DON'T YOU REASK THE QUESTION?
10:00AM 6 BY MR. BOSTIC:
10:00AM 7 Q. IN OTHER WORDS, DR. ROSENDORFF, IS THERE ANY SCENARIO
10:00AM 8 WHERE THE PROBLEMS IDENTIFIED WITH DAILY QUALITY CONTROL GO
10:00AM 9 AWAY WHEN YOU LOOK AT THINGS LIKE WESTGARD RULES AND
10:00AM 10 LEVEY-JENNINGS?
10:00AM 11 MR. COOPERSMITH: OBJECTION. LEADING.
10:00AM 12 THE COURT: OVERRULED.
10:00AM 13 THE WITNESS: NO. IN MY OPINION -- IT'S JUST AN
10:00AM 14 OPINION, IT'S NOT EXPERT TESTIMONY -- DAILY QC IS THE MOST
10:00AM 15 IMPORTANT QC. IN FACT, IT'S ALSO PART OF WESTGARD RULES. SO
10:00AM 16 IT'S WRAPPED UP INTO WESTGARD RULES, DAILY QC.
10:00AM 17 BY MR. BOSTIC:
10:00AM 18 Q. THERE'S ALSO BEEN SOME DISCUSSION DURING DIRECT AND CROSS
10:00AM 19 ABOUT THERANOS'S METHOD OF DILUTING BLOOD SAMPLES BEFORE
10:00AM 20 TESTING.
10:00AM 21 DO YOU RECALL THAT?
10:00AM 22 A. YES.
10:00AM 23 Q. DURING YOUR TIME AT THERANOS, DID YOU OBSERVE ANY PROBLEMS
10:01AM 24 CREATED IN TERMS OF ACCURACY OR SENSITIVITY AS A RESULT OF
10:01AM 25 THERANOS'S PRACTICE OF DILUTING SAMPLES?

10:01AM 1 MR. COOPERSMITH: OBJECTION. 702.

10:01AM 2 THE COURT: OVERRULED.

10:01AM 3 THE WITNESS: DURING VALIDATION, THERE WERE ATTEMPTS

10:01AM 4 TO MATCH THE MANUFACTURER SENSITIVITY FOR THE TEST.

10:01AM 5 THOSE, THOSE -- THAT SENSITIVITY IS SPELLED OUT IN THE

10:01AM 6 PACKAGE INSERT OF THE TEST.

10:01AM 7 BECAUSE OF THE DILUTION, IN MULTIPLE INSTANCES WE WERE NOT

10:01AM 8 ABLE TO MATCH THE SENSITIVITY OF THE PREDICATE TESTS.

10:01AM 9 BY MR. BOSTIC:

10:01AM 10 Q. AND WHAT DOES THAT MEAN IN PLAIN ENGLISH IF THE THERANOS

10:01AM 11 TESTS COULD NOT MATCH THE SENSITIVITY OF THE CONVENTIONAL

10:01AM 12 TESTS?

10:01AM 13 A. IT MEANS THAT THE LABORATORY WOULD NOT BE ABLE TO REPORT

10:01AM 14 BELOW A CERTAIN NUMBER.

10:01AM 15 THAT NUMBER WOULD BE HIGHER FOR THE THERANOS TESTS.

10:01AM 16 SO, FOR INSTANCE, IF -- TO DETECT MILD LIVER DAMAGE, YOU

10:02AM 17 NEED TO GO DOWN TO 20 UNITS OF AST. THERANOS WOULD ONLY BE

10:02AM 18 ABLE TO GO UP TO MAYBE 50 OR 60 -- GO DOWN TO 50 OR 60, I'M

10:02AM 19 SORRY.

10:02AM 20 SO IN MANY CLINICAL SCENARIOS, THE THERANOS TESTS JUST

10:02AM 21 DIDN'T HAVE THE SENSITIVITY.

10:02AM 22 Q. THERE WAS ALSO SOME DISCUSSION ABOUT YOUR OBSERVATIONS

10:02AM 23 WHEN IT CAME TO SOMETHING CALLED HEMOLYSIS.

10:02AM 24 DO YOU REMEMBER THAT?

10:02AM 25 A. YES.

10:02AM 1 Q. AND CAN YOU REMIND US WHAT HEMOLYSIS MEANS?

10:02AM 2 A. YEAH, SURE. HEMOLYSIS IS WHEN YOU COLLECT THE BLOOD,

10:02AM 3 PARTICULARLY WHEN YOU DO A FINGER PRICK AND YOU SQUEEZE THE

10:02AM 4 FINGER, WHAT HAPPENS IS THAT YOU DAMAGE THE RED BLOOD CELLS AND

10:02AM 5 THEY POP.

10:02AM 6 AND SO WHATEVER IS INSIDE OF THE RED BLOOD CELLS GETS INTO

10:02AM 7 THE SAMPLE, AND IT CAN REALLY INTERFERE WITH THE DETECTION OF A

10:02AM 8 LOT OF DIFFERENT THINGS.

10:02AM 9 Q. IN YOUR EXPERIENCE AT THERANOS, DID HEMOLYSIS HAVE ANY

10:03AM 10 EFFECT ON THE ACCURACY AND RELIABILITY OF CERTAIN TESTS?

10:03AM 11 MR. COOPERSMITH: OBJECTION. 702.

10:03AM 12 MR. BOSTIC: I'M JUST ASKING ABOUT HIS OBSERVATIONS,

10:03AM 13 YOUR HONOR.

10:03AM 14 THE COURT: OVERRULED.

10:03AM 15 YOU CAN ANSWER THE QUESTION.

10:03AM 16 THE WITNESS: YES. THERE'S A LARGE AMOUNT OF

10:03AM 17 HEMOGLOBIN IN RED BLOOD CELLS, AND WHEN THAT SPILLS OUT INTO

10:03AM 18 THE SAMPLE IT TURNS IT PINK AND THAT INTERFERES WITH THE

10:03AM 19 ABILITY OF THE READERS TO READ WHAT IS IN THE SAMPLE.

10:03AM 20 BY MR. BOSTIC:

10:03AM 21 Q. AND IS THAT SOMETHING THAT YOU SAW HAPPEN AT THERANOS?

10:03AM 22 A. YES.

10:03AM 23 Q. AND WAS IT A FREQUENT OR INFREQUENT THING THAT YOU

10:03AM 24 OBSERVED?

10:03AM 25 A. FREQUENT.

10:03AM 1 Q. AND WHEN IT CAME TO HEMOLYSIS, THINKING OF THE THERANOS
10:03AM 2 FINGERSTICK METHOD VERSUS THE CONVENTIONAL VEIN DRAW, DID YOU
10:03AM 3 OBSERVE HEMOLYSIS HAPPEN MORE IN ONE THAN THE OTHER?
10:03AM 4 A. WAY, WAY MORE FREQUENTLY WITH FINGERSTICK. I CAN'T -- I
10:03AM 5 COULD VENTURE THE PERCENTAGE, BUT I'LL JUST LEAVE IT AT THAT,
10:04AM 6 THAT IT WAS WAY MORE FREQUENT WITH FINGERSTICK.
10:04AM 7 Q. OKAY. YOU WERE ALSO ASKED SOME QUESTIONS DURING
10:04AM 8 CROSS-EXAMINATION ABOUT THERANOS'S LABORATORY INFORMATION
10:04AM 9 SYSTEM.
10:04AM 10 DO YOU REMEMBER THAT?
10:04AM 11 A. YES.
10:04AM 12 Q. CAN YOU -- LET'S SEE.
10:04AM 13 LET ME ASK, IF YOU WERE LOOKING AT THE LAB RESULT AND
10:04AM 14 TRYING TO DETERMINE WHETHER IT WAS ACCURATE OR INACCURATE AFTER
10:04AM 15 THE FACT --
10:04AM 16 A. YES.
10:04AM 17 Q. -- WHAT KINDS OF DATA WOULD YOU BE LOOKING AT?
10:04AM 18 A. I WOULD GO BACK AND REVIEW THE QUALITY CONTROL RECORDS FOR
10:04AM 19 THAT DAY.
10:04AM 20 Q. WHEN IT CAME TO IDENTIFYING A PARTICULAR LAB RESULT AS
10:04AM 21 INACCURATE, WOULD YOU EVER CONSIDER PATIENT FACTORS, LIKE HOW A
10:04AM 22 PATIENT WAS PRESENTING?
10:04AM 23 A. YES. CLINICALLY IF A PATIENT'S HYPERTHYROID, FOR
10:04AM 24 INSTANCE, HAS AN OVERACTIVE THYROID GLAND, I WOULD FULLY EXPECT
10:05AM 25 THE TSH TO BE VERY, VERY LOW.

10:05AM 1 IF WE -- IN TALKING TO THE DOCTORS WHO ARE ORDERING THE
10:05AM 2 TESTS, IF THE THERANOS TEST WASN'T SHOWING THAT, THAT WOULD
10:05AM 3 RAISE ALARM BELLS FOR ME.

10:05AM 4 Q. SO LET'S TAKE AN EXAMPLE LIKE THAT.

10:05AM 5 INFORMATION FROM A PATIENT'S DOCTOR ABOUT CONDITIONS THAT
10:05AM 6 THE PATIENT MIGHT HAVE OR HOW THEY WERE PRESENTING, WOULD THAT
10:05AM 7 INFORMATION BE STORED IN THERANOS'S LABORATORY INFORMATION
10:05AM 8 SYSTEM?

10:05AM 9 A. NO, IT WOULD NOT.

10:05AM 10 Q. WHEN IDENTIFYING SPECIFIC LAB RESULTS AS INACCURATE, WOULD
10:05AM 11 YOU EVER CONSIDER CONTEMPORANEOUS RESULTS FROM OTHER LABS
10:05AM 12 BESIDES THERANOS?

10:05AM 13 A. YES, OF COURSE. ON FREQUENT OCCASIONS I WOULD GET EMAILS
10:05AM 14 FROM DOCTORS SAYING THAT THE PATIENT HAD BEEN TESTED AT THE
10:05AM 15 SAME TIME AT QUEST OR A DAY LATER AT QUEST, FOR INSTANCE, AND
10:05AM 16 HAD VERY DIFFERENT RESULTS.

10:05AM 17 Q. AND SAME QUESTION FOR THAT.

10:05AM 18 WAS -- WERE RESULTS FROM CONVENTIONAL LABS, NON-THERANOS
10:06AM 19 LABS, STORED IN THE THERANOS LABORATORY INFORMATION SYSTEM?

10:06AM 20 A. NO.

10:06AM 21 Q. LOOKING AT THE LABORATORY INFORMATION SYSTEM -- FIRST OF
10:06AM 22 ALL, LET ME ASK, DID YOU EVER ACTUALLY ACCESS THE LIS? DID YOU
10:06AM 23 LOG IN AND VIEW THE DATA?

10:06AM 24 A. I DID.

10:06AM 25 Q. LOOKING AT THAT DATA, WAS IT POSSIBLE TO LOOK AT THE

10:06AM 1 INDIVIDUAL RESULTS AND IDENTIFY THEM INDIVIDUALLY AS ACCURATE
10:06AM 2 OR INACCURATE?
10:06AM 3 A. NO.
10:06AM 4 Q. I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT THE HCG TEST.
10:06AM 5 CAN YOU REMIND US WHAT THAT TEST WAS USED FOR?
10:06AM 6 A. THE COURT REPORTER IS PROBABLY USED TO THIS LONG WORD BY
10:06AM 7 NOW, BUT IT'S HUMAN CHORIONIC GONADOTROPIN, AND THAT'S A
10:06AM 8 PREGNANCY HORMONE.
10:06AM 9 MR. BOSTIC: THANK YOU.
10:06AM 10 YOUR HONOR, 4147 IS ALREADY ADMITTED.
10:06AM 11 MAY WE PUBLISH?
10:07AM 12 THE COURT: YES.
10:07AM 13 BY MR. BOSTIC:
10:07AM 14 Q. DR. ROSENDORFF, WE SEE HERE AN EMAIL THAT WE REVIEWED
10:07AM 15 BEFORE FROM MAY 30TH, 2014, --
10:07AM 16 MR. COOPERSMITH: I'M SORRY TO INTERRUPT,
10:07AM 17 YOUR HONOR. BUT MY SCREEN IS SOMEHOW NOT -- YOU HAVE TO TURN
10:07AM 18 IT ON APPARENTLY.
10:07AM 19 (LAUGHTER.)
10:07AM 20 BY MR. BOSTIC:
10:07AM 21 Q. DR. ROSENDORFF, YOUR SCREEN IS ON; CORRECT?
10:07AM 22 A. YES, SIR.
10:07AM 23 Q. DO YOU SEE YOUR EMAIL FROM MAY 30TH, 2014, WHERE YOU RELAY
10:07AM 24 YOUR DECISION TO STOP HCG TESTING ON THE EDISON?
10:07AM 25 DO YOU SEE THAT?

10:07AM 1 A. YES.

10:07AM 2 Q. IF I COULD ASK YOU TO LOOK NEXT, AND MAYBE WE CAN JUST --

10:07AM 3 THE COURT: OH, THEIR MONITORS ARE OFF. LET'S SEE

10:07AM 4 IF WE CAN FIX THE JURY'S MONITORS.

10:07AM 5 THEY'RE ON NOW?

10:07AM 6 JUROR: YES.

10:07AM 7 THE COURT: OKAY.

10:07AM 8 BY MR. BOSTIC:

10:07AM 9 Q. I'M JUST ABOUT TO ASK IF THEY CAN BE TURNED OFF AGAIN. IF

10:07AM 10 WE CAN JUST SHOW TO DR. ROSENDORFF --

10:07AM 11 THE COURT: ARE YOU SURE WE WANT TO GO THERE,

10:07AM 12 MR. BOSTIC?

10:08AM 13 MR. BOSTIC: LET'S TRY IT ONCE.

10:08AM 14 IF WE CAN JUST SHOW TO DR. ROSENDORFF EXHIBIT 5418.

10:08AM 15 THE COURT: ALL RIGHT. LET'S TRY THAT 5418 JUST TO

10:08AM 16 DR. ROSENDORFF.

10:08AM 17 BY MR. BOSTIC:

10:08AM 18 Q. DO YOU HAVE THAT ON YOUR SCREEN, DR. ROSENDORFF?

10:08AM 19 A. YES, I DO.

10:08AM 20 Q. AND IS THIS A CONTINUATION OF THAT SAME EMAIL CHAIN

10:08AM 21 RELATING TO YOUR DECISION TO STOP HCG EDISON TESTING?

10:08AM 22 A. YES, IT IS.

10:08AM 23 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5418.

10:08AM 24 MR. COOPERSMITH: NO OBJECTION.

10:08AM 25 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

10:08AM 1 LET'S SEE IF IT IS.

10:08AM 2 GREAT.

10:08AM 3 (GOVERNMENT'S EXHIBIT 5418 WAS RECEIVED IN EVIDENCE.)

10:08AM 4 BY MR. BOSTIC:

10:08AM 5 Q. SO, DR. ROSENDORFF, NOW LOOKING AT 5418, DO YOU SEE THAT

10:08AM 6 THIS IS -- WE SEE A COUPLE OF MESSAGES FROM JUNE 2014 FOLLOWING

10:08AM 7 YOUR DECISION.

10:08AM 8 DO YOU SEE THAT?

10:08AM 9 A. YES, I DO.

10:08AM 10 Q. AND DO YOU SEE THAT THERE'S A MESSAGE FROM DANIEL YOUNG TO

10:09AM 11 SUNNY BALWANI AND CHINMAY PANGARKAR SECOND TO THE TOP OF THE

10:09AM 12 PAGE?

10:09AM 13 A. YES, I DO SEE THAT.

10:09AM 14 Q. SO A FEW DAYS AFTER YOU SUSPENDED HCG EDISON TESTING,

10:09AM 15 DANIEL YOUNG WRITES TO THE DEFENDANT, "BY THE WAY, WE NEVER

10:09AM 16 SWITCHED TO IMMULITE IN LIS -- IT WAS NOT CLEAR TO ME THAT THIS

10:09AM 17 DECISION WAS MADE."

10:09AM 18 DO YOU SEE THAT?

10:09AM 19 A. YES, I DO.

10:09AM 20 Q. AROUND THIS TIME, LATE MAY, EARLY JUNE 2014, WAS THERE ANY

10:09AM 21 QUESTION IN YOUR MIND AS TO WHETHER THAT DECISION TO SUSPEND

10:09AM 22 EDISON HCG TESTING HAD BEEN MADE?

10:09AM 23 A. NO, THERE WAS NO QUESTION.

10:09AM 24 Q. NEXT, IF I COULD JUST SHOW YOU EXHIBIT 13875.

10:09AM 25 JUST ON DR. ROSENDORFF'S SCREEN.

10:09AM 1 AND DO YOU HAVE 13875 NOW?

10:09AM 2 A. YES, I DO.

10:09AM 3 Q. AND DO YOU SEE HERE SOME ADDITIONAL EMAIL CORRESPONDENCE,

10:10AM 4 INCLUDING YOU AND MR. BALWANI, ABOUT HCG STATUS?

10:10AM 5 A. YES, I DO.

10:10AM 6 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS

10:10AM 7 13875.

10:10AM 8 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:10AM 9 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:10AM 10 (DEFENDANT'S EXHIBIT 13875 WAS RECEIVED IN EVIDENCE.)

10:10AM 11 BY MR. BOSTIC:

10:10AM 12 Q. AND NOW THAT WE CAN ALL SEE THAT, LET'S LOOK AT THE BOTTOM

10:10AM 13 MESSAGE ON PAGE 1.

10:10AM 14 AND DO YOU SEE HERE, DR. ROSENDORFF, THERE'S AN EMAIL FROM

10:10AM 15 YOU TO MR. BALWANI AND DANIEL YOUNG ON JUNE 4TH?

10:10AM 16 A. YES, I SEE THAT.

10:10AM 17 Q. AND DO YOU SEE THAT THERE IS A DISCUSSION ABOUT THE PLAN

10:10AM 18 GOING FORWARD FOR HCG?

10:10AM 19 A. YES.

10:10AM 20 Q. AND UNDER GOING FORWARD, DO YOU SEE NUMBER 1, IT SAYS,

10:10AM 21 "CHANGE HCG TO VACUTAINER (SST OR GOLD-TOP), AND RUN ON

10:10AM 22 IMMULITE."

10:10AM 23 DO YOU SEE THAT?

10:10AM 24 A. YES, I DO.

10:10AM 25 Q. AND CAN YOU EXPLAIN WHAT THAT MEANS?

10:10AM 1 A. THAT WOULD MEAN PERMANENTLY CHANGING THE WAY THERANOS
10:11AM 2 TESTED HCG TO DISCONTINUE TESTING ON VENOUS BLOOD USING THE
10:11AM 3 VACUTAINER -- I'M SORRY, TO DISCONTINUE TESTING USING THE
10:11AM 4 FINGER PRICK AND TO ONLY TEST USING VENOUS BLOOD OR VACUTAINER,
10:11AM 5 AND TO ONLY RUN ON THE IMMULITE.

10:11AM 6 Q. WAS THE IMMULITE A NON-THERANOS ANALYZER?

10:11AM 7 A. YES, IT WAS.

10:11AM 8 Q. LET'S LOOK AT PAGE 2 AND CONTINUE IN YOUR EMAIL.

10:11AM 9 DO YOU SEE THAT NUMBER 3 IN THE PLAN THERE IS TO "RESUME
10:11AM 10 CTN HCG WHEN WE HAVE RESOLVED THESE ISSUES."

10:11AM 11 DO YOU SEE THAT?

10:11AM 12 A. YES, I DO.

10:11AM 13 Q. LET'S GO BACK TO PAGE 1 AND LOOK AT DR. YOUNG'S MESSAGE IN
10:11AM 14 THE MIDDLE.

10:11AM 15 AND DO YOU SEE IN DR. YOUNG'S MESSAGE HE SAYS AT THE
10:11AM 16 BOTTOM, "IF WE NEED TO COLLECT VACUTAINERS TOMORROW, WE WOULD
10:11AM 17 NEED TO SEND SPECIAL INSTRUCTIONS TO THE PSC'S. RIGHT NOW WE
10:12AM 18 ARE NOT PLANNING ON DOING THIS."

10:12AM 19 DO YOU SEE THAT?

10:12AM 20 A. YES, I DO.

10:12AM 21 Q. IN OTHER WORDS, DOES THAT MEAN THAT IT WAS NOT PLANNED AT
10:12AM 22 THIS TIME TO ACTUALLY COLLECT VACUTAINERS FOR HCG THE FOLLOWING
10:12AM 23 DAY?

10:12AM 24 MR. COOPERSMITH: OBJECTION. CALLS FOR SPECULATION.

10:12AM 25 THE COURT: CAN YOU REPHRASE THAT, PLEASE.

10:12AM 1 BY MR. BOSTIC:

10:12AM 2 Q. DR. ROSENDORFF, IN ORDER TO ACTUALLY IMPLEMENT THIS CHANGE

10:12AM 3 AND RUN HCG ON VACUTAINERS AND NON-THERANOS DEVICES, WOULD IT

10:12AM 4 HAVE BEEN NECESSARY TO COMMUNICATE WITH THE THERANOS PATIENT

10:12AM 5 SERVICE CENTERS?

10:12AM 6 A. YES.

10:12AM 7 Q. AND WOULD THAT HAVE TO BE DONE IN ORDER FOR THEM TO KNOW

10:12AM 8 ABOUT THAT CHANGE?

10:12AM 9 A. YES.

10:12AM 10 Q. OKAY. WE CAN SET THAT ASIDE.

10:12AM 11 AND NEXT, IF I COULD SHOW JUST ON YOUR SCREEN,

10:12AM 12 DR. ROSENDORFF, EXHIBIT 5420?

10:13AM 13 A. I HAVE IT.

10:13AM 14 Q. ACTUALLY, LET'S SKIP TO, INSTEAD, 13876. AGAIN, JUST ON

10:13AM 15 YOUR SCREEN.

10:13AM 16 AND DO YOU SEE HERE AN EMAIL CHAIN INCLUDING YOU AND

10:13AM 17 MR. BALWANI ABOUT THE STATUS OF HCG TESTING?

10:13AM 18 A. YES.

10:13AM 19 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS

10:13AM 20 13876.

10:13AM 21 MR. COOPERSMITH: NO OBJECTION.

10:13AM 22 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:13AM 23 (DEFENDANT'S EXHIBIT 13876 WAS RECEIVED IN EVIDENCE.)

10:13AM 24 BY MR. BOSTIC:

10:13AM 25 Q. AND LET'S START ON PAGE 2 AT THE TOP OF THAT PAGE.

10:13AM 1 AND, DR. ROSENDORFF, DO YOU SEE AN EMAIL FROM YOU TO

10:13AM 2 CHINMAY PANGARKAR, SURAJ SAKSENA AND SUNNY BALWANI ASKING FOR A

10:13AM 3 STATUS UPDATE ON THE HCG EDISON?

10:13AM 4 A. YES, I DO.

10:13AM 5 Q. AND LET'S GO TO PAGE 1, AND DO WE SEE AT THE BOTTOM OF

10:14AM 6 PAGE 1 THERE'S AN EMAIL FROM CHINMAY PANGARKAR AND HE SAYS,

10:14AM 7 "BASED ON REPORTS SINCE FRIDAY, WE HAVE BEEN CONSISTENTLY

10:14AM 8 PASSING QC -- SO WE DON'T HAVE A PROBLEM WITH THE CURRENT

10:14AM 9 BUILD."

10:14AM 10 DO YOU SEE THAT?

10:14AM 11 A. YES, I DO.

10:14AM 12 Q. AND LET'S GO FORWARD IN TIME AND MOVE UP THE PAGE, AND

10:14AM 13 LOOK AT THE TOP OF THE PAGE, THE TOP TWO MESSAGES.

10:14AM 14 AND DO YOU SEE YOU ASK THAT GROUP, "SO HCG IS BACK ON

10:14AM 15 VACUTAINERS?"

10:14AM 16 A. YES.

10:14AM 17 Q. AND MR. BALWANI RESPONDS, "NO. IT IS ON NANOTAINERS PER

10:14AM 18 CHINMAY'S EMAIL BELOW."

10:14AM 19 DO YOU SEE THAT?

10:14AM 20 A. YES, I DO.

10:14AM 21 Q. SO AS OF JUNE 16TH, WHAT METHOD WAS BEING USED AT THERANOS

10:14AM 22 TO RUN HCG TESTING, ACCORDING TO THIS?

10:14AM 23 A. NANOTAINERS.

10:14AM 24 Q. AND DOES THAT MEAN A THERANOS ANALYZER?

10:14AM 25 A. YES.

10:14AM 1 Q. IN THAT EMAIL YOU'RE ASKING THIS GROUP, INCLUDING
10:14AM 2 MR. BALWANI, WHAT METHOD IS BEING USED.
10:14AM 3 DO YOU SEE THAT?
10:15AM 4 A. YES.
10:15AM 5 Q. IF THIS HAD BEEN YOUR DECISION ABOUT WHICH METHOD WAS USED
10:15AM 6 TO RUN HCG TESTING, WOULD THERE HAVE BEEN ANY NEED FOR YOU TO
10:15AM 7 ASK ON THIS DATE?
10:15AM 8 A. NO. I WAS CONSTANTLY CLARIFYING -- I'M SORRY.
10:15AM 9 I WAS CONSTANTLY TRYING TO GET TO THE TRUTH OF HOW THINGS
10:15AM 10 ACTUALLY WERE BEING DONE, REGARDLESS OF MY INSTRUCTIONS.
10:15AM 11 Q. FOLLOWING THIS TIME PERIOD IN MID-JUNE, DO YOU RECALL
10:15AM 12 WHETHER THE ISSUES WITH HCG, ACCURACY AND RELIABILITY, WERE
10:15AM 13 RESOLVED OR NOT?
10:15AM 14 A. I DON'T BELIEVE THEY WERE, NO.
10:15AM 15 Q. LET'S LOOK AT SOME EXAMPLES OF THAT.
10:15AM 16 FIRST OF ALL, IF I COULD JUST SHOW ON YOUR SCREEN 5421?
10:15AM 17 A. I HAVE IT.
10:15AM 18 Q. DO YOU SEE --
10:15AM 19 A. I HAVE IT.
10:15AM 20 Q. AND DO YOU SEE THAT 5421 IS AN EMAIL INCLUDING YOU AND
10:16AM 21 MR. BALWANI RELATING TO QUALITY CONTROL PERFORMANCE?
10:16AM 22 A. YES.
10:16AM 23 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5421.
10:16AM 24 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.
10:16AM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:16AM 1 (GOVERNMENT'S EXHIBIT 5421 WAS RECEIVED IN EVIDENCE.)

10:16AM 2 BY MR. BOSTIC:

10:16AM 3 Q. AND LOOKING AT 5421, DO YOU SEE THAT IN THIS EMAIL, THIS

10:16AM 4 MESSAGE FROM LANGLY GEE, THERE'S A REFERENCE TO 33 EDISONS

10:16AM 5 UNDERGOING QUALITY CONTROL ON THIS DATE IN LATE JUNE?

10:16AM 6 A. YES.

10:16AM 7 Q. AND DO YOU SEE OUT OF THOSE 33, IT'S REPORTED THAT ONLY 20

10:16AM 8 EDISONS PASSED.

10:16AM 9 DO YOU SEE THAT?

10:16AM 10 A. YES.

10:16AM 11 Q. AND DO YOU SEE THAT IT'S REPORTED THAT "9 EDISONS FOR TES,

10:16AM 12 TSH, HCG, FT4 AND VITAMIN D FAILED LEVEL 1 AND/OR LEVEL 2 QC"?

10:17AM 13 A. YES.

10:17AM 14 Q. SO, IN OTHER WORDS, ARE WE STILL SEEING EDISONS FAIL HCG

10:17AM 15 QUALITY CONTROL IN LATE JUNE 2014?

10:17AM 16 A. YES, WE ARE.

10:17AM 17 Q. AND IF I CAN SHOW YOU NEXT JUST ON YOUR SCREEN

10:17AM 18 EXHIBIT 5422?

10:17AM 19 A. I HAVE IT.

10:17AM 20 Q. OKAY. AND DO YOU SEE THERE A SIMILAR UPDATE FROM

10:17AM 21 LANGLY GEE ABOUT QUALITY CONTROL PERFORMANCE FOR EDISONS?

10:17AM 22 A. YES.

10:17AM 23 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 5422.

10:17AM 24 MR. COOPERSMITH: NO OBJECTION.

10:17AM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:17AM 1 (GOVERNMENT'S EXHIBIT 5422 WAS RECEIVED IN EVIDENCE.)

10:17AM 2 BY MR. BOSTIC:

10:17AM 3 Q. DR. ROSENDORFF, HERE'S AN EMAIL FROM LANGLY GEE ON

10:17AM 4 JUNE 28TH, 2014.

10:17AM 5 IS THAT CORRECT?

10:17AM 6 A. YES.

10:17AM 7 Q. AND HERE UNDER THE SUBJECT LINE, INSTRUMENT BRING UP, HE

10:17AM 8 REPORTS THAT ONLY 17 OF 35 EDISONS PASSED QUALITY CONTROL FROM

10:18AM 9 THE PREVIOUS NIGHT.

10:18AM 10 DO YOU SEE THAT REPORT?

10:18AM 11 A. YES.

10:18AM 12 Q. AND THE NEXT SENTENCE REPORTS THAT HCG IS NOT AVAILABLE

10:18AM 13 YET FOR TESTING.

10:18AM 14 DO YOU SEE THAT?

10:18AM 15 A. YES, I DO.

10:18AM 16 Q. 17 OUT OF 35 EDISONS PASSING, IS THAT LESS THAN HALF OF

10:18AM 17 THE NUMBER OF EDISONS THAT PASSED QUALITY CONTROL?

10:18AM 18 A. YES, IT IS.

10:18AM 19 Q. OKAY. WE CAN SET THAT ASIDE.

10:18AM 20 WHEN IT CAME TO QUALITY CONTROL PERFORMANCE AT THERANOS,

10:18AM 21 WERE PROBLEMS RELATED ONLY TO THE HCG ASSAY?

10:18AM 22 A. NO.

10:18AM 23 Q. EXHIBIT 13809 WAS PREVIOUSLY ADMITTED.

10:18AM 24 MAY WE DISPLAY, YOUR HONOR?

10:18AM 25 THE COURT: YES.

10:18AM 1 BY MR. BOSTIC:

10:18AM 2 Q. AND LOOKING AT THIS FIRST PAGE, DO YOU REMEMBER DISCUSSING

10:18AM 3 THIS PRESENTATION WITH MR. COOPERSMITH DURING

10:18AM 4 CROSS-EXAMINATION?

10:18AM 5 A. YES, I DID.

10:18AM 6 Q. AND I'D LIKE TO DRAW YOUR ATTENTION TO PAGE 12 OF THIS

10:18AM 7 PRESENTATION.

10:18AM 8 AND DO YOU REMEMBER LOOKING AT THIS SLIDE WITH

10:19AM 9 MR. COOPERSMITH?

10:19AM 10 A. YES, I DID.

10:19AM 11 Q. DO YOU RECALL THAT ON DIRECT WE LOOKED AT A REPORT

10:19AM 12 INDICATING A 26 PERCENT QUALITY CONTROL FAILURE RATE FOR

10:19AM 13 MARCH 2014?

10:19AM 14 A. YES. THAT WAS THE AVERAGE QC FAILURE RATE FOR THAT MONTH

10:19AM 15 ACROSS THE EDISONS.

10:19AM 16 Q. DO YOU SEE THAT THIS CHART LISTS OTHER PERCENTAGES FOR

10:19AM 17 CONTROLS FAILED?

10:19AM 18 A. YES, I DO.

10:19AM 19 Q. FIRST OF ALL, LET ME ASK, ARE YOU ABLE TO VOUCH FOR THESE

10:19AM 20 NUMBERS AND WHETHER THEY REPRESENT THE TYPICAL PERFORMANCE OF

10:19AM 21 QUALITY CONTROL AT THERANOS?

10:19AM 22 A. NO, I'M NOT.

10:19AM 23 Q. LET ME ASK YOU ABOUT THE TWO SECTIONS AT THE BOTTOM, ONE

10:19AM 24 RELATES TO Q1 PREDICATE AND THE OTHER ONE SAYS Q1 THERANOS.

10:19AM 25 DO YOU SEE THAT?

10:19AM 1 A. YES, I DO.

10:19AM 2 Q. CAN YOU EXPLAIN WHAT THE DIFFERENCE IS BETWEEN THOSE TWO

10:19AM 3 SECTIONS?

10:19AM 4 A. SO Q1 THERANOS WOULD BE ALL OF THE CONTROLS THAT WERE RUN

10:20AM 5 ON THE THERANOS INSTRUMENTS AND WHAT THAT FAILURE RATE WAS.

10:20AM 6 SO THOSE THERANOS INSTRUMENTS WOULD BE THE EDISON AND THE

10:20AM 7 MODIFIED SIEMENS TEST.

10:20AM 8 Q. OKAY. AND THE THIRD BULLET POINT DOWN UNDER EACH OF THESE

10:20AM 9 SHOWS THE PERCENTAGE OF CONTROLLED FAILS -- EXCUSE ME, OF

10:20AM 10 CONTROLS FAILED, AT LEAST ACCORDING TO THIS PRESENTATION.

10:20AM 11 DO YOU SEE THAT?

10:20AM 12 A. YES.

10:20AM 13 Q. AND DO YOU SEE THAT THE THERANOS DEVICES SHOW A

10:20AM 14 2.9 PERCENT CONTROL FAILURE RATE?

10:20AM 15 A. YES, I DO.

10:20AM 16 Q. AND THE PREDICATE DEVICES SHOW A .75 PERCENT CONTROL

10:20AM 17 FAILURE RATE?

10:20AM 18 A. YES, I DO.

10:20AM 19 Q. SO I ASKED YOU ABOUT THESE SPECIFIC NUMBERS ALREADY, BUT

10:20AM 20 LET ME ASK GENERALLY WHETHER IT SQUARES WITH YOUR RECOLLECTION

10:20AM 21 THAT THE THERANOS ASSAYS FAILED CONTROL ABOUT THREE OR FOUR

10:20AM 22 TIMES MORE OFTEN THAN THE PREDICATE DEVICES?

10:20AM 23 A. AT LEAST. AT LEAST.

10:20AM 24 Q. OKAY. WE CAN SET THAT ASIDE.

10:21AM 25 I'D LIKE TO ASK YOU SOME FOLLOW-UP QUESTIONS ABOUT AN

10:21AM 1 INSPECTION THAT OCCURRED AT THERANOS IN 2013.

10:21AM 2 DO YOU REMEMBER THAT?

10:21AM 3 A. YES, I DO.

10:21AM 4 MR. BOSTIC: YOUR HONOR, I'D LIKE TO DISPLAY

10:21AM 5 EXHIBIT 4047 THAT HAS BEEN PREVIOUSLY ADMITTED.

10:21AM 6 THE COURT: YES.

10:21AM 7 BY MR. BOSTIC:

10:21AM 8 Q. AND, DR. ROSENDORFF, DO YOU REMEMBER LOOKING AT THIS EMAIL

10:21AM 9 FROM MS. HOLMES ABOUT A PATH FOR THE AUDITORS TO AVOID AREAS

10:21AM 10 THAT CANNOT BE ACCESSED?

10:21AM 11 A. YES.

10:21AM 12 Q. YOU TESTIFIED ON CROSS-EXAMINATION THAT AT NO TIME WERE

10:21AM 13 YOU TRYING TO DECEIVE THE INSPECTORS OR CONCEAL ANYTHING FROM

10:21AM 14 THEM; CORRECT?

10:21AM 15 A. I WAS NOT.

10:21AM 16 Q. IF I COULD SHOW YOU JUST ON YOUR SCREEN EXHIBIT 4316.

10:22AM 17 A. I SEE IT.

10:22AM 18 Q. AND LET'S -- WELL, LET ME ASK, IS THIS AN EMAIL FROM

10:22AM 19 DANIEL YOUNG TO YOU RELATING TO THIS TOPIC AND WHAT WAS TO BE

10:22AM 20 COVERED ON THAT INSPECTION?

10:22AM 21 A. YES, IT DOES.

10:22AM 22 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 4316.

10:22AM 23 MR. COOPERSMITH: OBJECTION, YOUR HONOR. HEARSAY.

10:22AM 24 THE COURT: IS THIS A BUSINESS RECORD?

10:22AM 25 MR. BOSTIC: I BELIEVE IT IS, YOUR HONOR. I THINK

10:22AM 1 THE FOUNDATION HAS BEEN LAID, BUT I'M HAPPY TO DO MORE.

10:22AM 2 THIS ALSO IS NOT OFFERED FOR THE TRUTH. THIS IS A

10:22AM 3 DIRECTION BEING GIVEN.

10:22AM 4 THE COURT: MR. COOPERSMITH.

10:22AM 5 MR. COOPERSMITH: YOUR HONOR, IT'S HEARSAY.

10:22AM 6 MR. BALWANI IS NOT ON THIS EMAIL.

10:22AM 7 THE COURT: ALL RIGHT. THANK YOU.

10:22AM 8 WHY DON'T YOU LAY A FOUNDATION FOR A BUSINESS RECORD.

10:22AM 9 BY MR. BOSTIC:

10:22AM 10 Q. DR. ROSENDORFF, AROUND THIS TIME PERIOD, WERE YOU AND

10:22AM 11 OTHERS AT THERANOS EXCHANGING EMAILS IN ORDER TO COORDINATE FOR

10:22AM 12 THIS UPCOMING INSPECTION?

10:22AM 13 A. THIS EMAIL AT 11:58 WAS AN EMAIL THAT DANIEL SENT TO ME IN

10:23AM 14 RESPONSE TO AN EMAIL THAT I SENT TO HIM.

10:23AM 15 Q. AND BEFORE WE GET INTO THE SPECIFIC EMAIL, BECAUSE IT'S

10:23AM 16 NOT ADMITTED YET --

10:23AM 17 A. OH, I'M SORRY.

10:23AM 18 Q. -- LET ME JUST ASK YOU GENERALLY, WAS THE EMAIL USED

10:23AM 19 INTERNALLY AT THERANOS FOR THE PURPOSES OF COORDINATING THIS

10:23AM 20 INSPECTION?

10:23AM 21 A. YES, ABSOLUTELY.

10:23AM 22 Q. AND IN THOSE EMAILS, WAS IT IMPORTANT FOR THE INDIVIDUALS

10:23AM 23 WRITING TO RELAY INSPECTION ACCURATELY?

10:23AM 24 A. YES.

10:23AM 25 Q. AND WERE THESE EMAILS PRESERVED SO THAT THEY COULD BE

10:23AM 1 REFERENCED LATER IF NEEDED?

10:23AM 2 A. YES.

10:23AM 3 MR. BOSTIC: YOUR HONOR, WE OFFER 4316 AS A BUSINESS

10:23AM 4 RECORD.

10:23AM 5 THE COURT: IT'S ADMITTED.

10:23AM 6 MR. COOPERSMITH: SAME OBJECTION, YOUR HONOR.

10:23AM 7 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

10:23AM 8 (GOVERNMENT'S EXHIBIT 4316 WAS RECEIVED IN EVIDENCE.)

10:23AM 9 MR. BOSTIC: AND MAY WE PUBLISH, YOUR HONOR?

10:23AM 10 THE COURT: YES.

10:23AM 11 BY MR. BOSTIC:

10:23AM 12 Q. LOOKING AT 4316, DO YOU SEE AN EMAIL FROM DANIEL YOUNG TO

10:23AM 13 YOU WITH THE SUBJECT LINE NORMANDY LAB?

10:23AM 14 A. YES, I DO SEE THAT.

10:23AM 15 Q. AND THE TEXT SAYS, "LET'S NOT REMIND HER ABOUT THE

10:24AM 16 DOWNSTAIRS LAB UNLESS SHE ASKS AGAIN. JUST SIMPLER IF WE CAN

10:24AM 17 JUST SHOW HER THE LAB UPSTAIRS."

10:24AM 18 DO YOU SEE THAT?

10:24AM 19 A. YES, I DO.

10:24AM 20 Q. AND WHAT IS THIS REFERRING TO?

10:24AM 21 A. I'LL TRY TO EXPLAIN IT WITHOUT REFERENCING MY PREVIOUS

10:24AM 22 EMAIL I THINK IF THAT'S THE INSTRUCTIONS OF THE COURT.

10:24AM 23 Q. NO, THAT'S FINE. YOU CAN REFERENCE YOUR PREVIOUS EMAIL.

10:24AM 24 A. OH.

10:24AM 25 MY PREVIOUS EMAIL ESSENTIALLY SAID -- I DON'T REMEMBER THE

10:24AM 1 EXACT TEXT, BUT IT WAS BASICALLY A QUESTION FROM ME TO DANIEL
10:24AM 2 SAYING, ARE WE GOING TO BE SHOWING HER THE DOWNSTAIRS
10:24AM 3 LABORATORY?
10:24AM 4 Q. AND WHAT IS YOUR UNDERSTANDING OF THE DIRECTION THAT YOU
10:24AM 5 RECEIVED BACK FROM DANIEL YOUNG?
10:24AM 6 A. HE SAID, NO, WE WILL NOT BE SHOWING HER THE DOWNSTAIRS
10:24AM 7 LABORATORY UNTIL SHE ASKS AGAIN.
10:24AM 8 Q. AND WHO IS THE "HER" IN THIS EMAIL?
10:24AM 9 A. THE INSPECTOR FROM LABORATORY FIELD SERVICES.
10:24AM 10 Q. AND FINALLY, CAN YOU REMIND US OF THE DIFFERENCE BETWEEN
10:24AM 11 THE DOWNSTAIRS LAB AND THE UPSTAIRS LAB AT THERANOS?
10:24AM 12 A. THE DOWNSTAIRS LAB CONTAINED ALL OF THE EDISONS, AND IT
10:25AM 13 WAS WHERE THE DILUTION METHODS WERE BEING RUN ON THE MODIFIED
10:25AM 14 SIEMENS INSTRUMENTS.
10:25AM 15 THE UPSTAIRS LAB CONTAINED EXCLUSIVELY PREDICATE DEVICES.
10:25AM 16 Q. AT THE TOP PART OF THIS PAGE THAT YOU CAN SEE ON YOUR
10:25AM 17 SCREEN, YOU FORWARD THIS EMAIL TO AN EMAIL ADDRESS THAT WE HAVE
10:25AM 18 REDACTED.
10:25AM 19 BUT DO YOU RECALL FORWARDING THIS TO YOUR PERSONAL EMAIL
10:25AM 20 ADDRESS?
10:25AM 21 A. YES, I DID.
10:25AM 22 Q. AND WHY DID YOU DECIDE TO DO THAT IN NOVEMBER OF 2014, THE
10:25AM 23 FOLLOWING YEAR?
10:25AM 24 A. I WAS, I WAS UNEASY. I WAS UNCOMFORTABLE WITH THE
10:25AM 25 DIRECTION THAT I HAD BEEN GIVEN BY MR. YOUNG, AND I WANTED TO,

10:25AM 1 TO LEAVE A PAPER TRAIL FOR THE FUTURE.

10:25AM 2 Q. AROUND THE TIME OF THIS INSPECTION, DO YOU RECALL

10:25AM 3 RECEIVING ADDITIONAL INSTRUCTION FROM MR. BALWANI ABOUT WHAT

10:25AM 4 AREAS OF THE LAB WOULD BE ACCESSIBLE TO THE INSPECTOR?

10:26AM 5 A. WHAT I RECALL MR. BALWANI EXPLICITLY SAID IS I DON'T WANT

10:26AM 6 ANYBODY GOING IN AND OUT OF NORMANDY DURING THE PERIOD OF THE

10:26AM 7 INSPECTION.

10:26AM 8 Q. OKAY. LET'S LOOK AT ANOTHER EXAMPLE OF DIRECTION AT

10:26AM 9 EXHIBIT 1295. AND IF WE CAN PUT THAT JUST ON DR. ROSENDORFF'S

10:26AM 10 SCREEN.

10:26AM 11 DR. ROSENDORFF, DO YOU SEE AN EXHIBIT MARKED 1295 IN FRONT

10:26AM 12 OF YOU?

10:26AM 13 A. YES, I SEE IT.

10:26AM 14 Q. AND DO YOU SEE THAT THIS IS AN EMAIL FROM MR. BALWANI TO

10:26AM 15 YOU AND OTHERS AT THERANOS PROVIDING SOME DIRECTION IN

10:26AM 16 CONNECTION WITH THAT INSPECTION?

10:26AM 17 A. YES, SIR.

10:26AM 18 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1295.

10:26AM 19 MR. COOPERSMITH: NO OBJECTION.

10:26AM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:27AM 21 (GOVERNMENT'S EXHIBIT 1295 WAS RECEIVED IN EVIDENCE.)

10:27AM 22 BY MR. BOSTIC:

10:27AM 23 Q. SO, DR. ROSENDORFF, LOOKING AT THIS EMAIL, IS THIS FROM

10:27AM 24 THAT SAME INSPECTION THAT WE'VE BEEN TALKING ABOUT?

10:27AM 25 A. YES, IT IS.

10:27AM 1 Q. AND DO YOU SEE THAT MR. BALWANI DIRECTS YOU AND OTHERS AT
10:27AM 2 THERANOS, "FOR THE AREA INSIDE OF THE NORMANDY LAB THAT IS
10:27AM 3 CORDONED OFF BY THE DIVIDERS -- IF THE INSPECTOR ASKS, WE
10:27AM 4 SHOULD SAY THAT THIS AREA IS FOR FUTURE GROWTH AND IS BEING
10:27AM 5 ORGANIZED (AS IS THE CASE) BUT IS STILL RESTRICTED ONLY TO THE
10:27AM 6 CLIA LAB AND AUTHORIZED TEAM (AS IS THE CASE)."
10:27AM 7 DO YOU SEE THAT?
10:27AM 8 A. YES, I DO.
10:27AM 9 Q. AND DURING THAT TIME PERIOD, DO YOU RECALL A PORTION OF
10:27AM 10 THE NORMANDY LAB BEING CORDONED OFF BY DIVIDERS FOR THIS
10:27AM 11 INSPECTION?
10:27AM 12 A. I RECALL THAT THE BANKS OF EDISONS WERE BEHIND THE
10:27AM 13 DIVIDERS OR PARTITIONS, SIMILAR TO THE KIND YOU SEE IN OPEN
10:27AM 14 OFFICE SPACE WHERE YOU HAVE WALLS ON STANDS THAT WOULD SEPARATE
10:28AM 15 ONE OFFICE FROM ANOTHER.
10:28AM 16 I DON'T REMEMBER AT THIS SPECIFIC TIME WHAT NORMANDY
10:28AM 17 LOOKED LIKE.
10:28AM 18 Q. LET ME ASK THEN, BASED ON YOUR PREVIOUS EXPERIENCE AS A
10:28AM 19 LAB DIRECTOR, WAS IT NORMAL OR UNUSUAL TO RECEIVE THIS KIND OF
10:28AM 20 DIRECTION FROM MANAGEMENT ABOUT HOW TO RESPOND TO INSPECTOR
10:28AM 21 QUESTIONS?
10:28AM 22 A. SITTING HERE TODAY, I FEEL THAT IT IS INAPPROPRIATE.
10:28AM 23 Q. DID YOU HAVE THAT REACTION AT THE TIME?
10:28AM 24 A. I WAS UNCOMFORTABLE WITH THE DIRECTION THAT MR. BALWANI
10:28AM 25 WAS GIVING.

10:28AM 1 Q. OKAY. WE CAN SET THAT ASIDE.

10:28AM 2 I'D LIKE TO TALK TO YOU NEXT ABOUT THE VALIDATION WORK

10:28AM 3 THAT YOU WITNESSED AND WERE INVOLVED WITH AT THERANOS.

10:28AM 4 A. YES.

10:28AM 5 Q. I WANT TO MAKE SURE THAT WE'RE CLEAR ON THE RELATIONSHIP

10:28AM 6 BETWEEN VALIDATION AND ONGOING QUALITY EVALUATION STEPS.

10:29AM 7 A. YES.

10:29AM 8 Q. FIRST OF ALL, CAN YOU EXPLAIN THE DIFFERENCE BETWEEN THOSE

10:29AM 9 TWO?

10:29AM 10 A. VALIDATION IS A SERIES OF DATA GATHERING EXERCISES --

10:29AM 11 THAT'S A LITTLE VERBOSE. I APOLOGIZE. IT'S A SERIES OF

10:29AM 12 EXPERIMENTS BASICALLY THAT THE R&D FOLKS DO FOLLOWING A STRICT

10:29AM 13 PLAN.

10:29AM 14 WHEN THEY DRAW UP THE PLAN, THEY REFERENCE CLIA LAW IN

10:29AM 15 TERMS OF WHAT NEEDS TO BE PROVEN, AND THEY ALSO -- WE ALSO

10:29AM 16 REFERENCED GUIDANCE DOCUMENTS.

10:29AM 17 THAT VALIDATION IS PERFORMED IN R&D AND THE DATA IS

10:29AM 18 RECORDED. THE PERFORMANCE CHARACTERISTICS OF THE TEST ARE

10:29AM 19 PROVEN, AND THEN THE LABORATORY DIRECTOR MAKES A DECISION ABOUT

10:29AM 20 WHETHER THAT TEST IS APPROPRIATE FOR PATIENT CARE.

10:29AM 21 Q. SO YOU JUST DESCRIBED THE VALIDATION PROCESS THAT OCCURS

10:29AM 22 BEFORE AN ASSAY IS USED FOR PATIENT TESTING; IS THAT RIGHT?

10:29AM 23 A. YES.

10:29AM 24 Q. AND HOW IS THAT DIFFERENT FROM WHAT HAPPENS AFTER A TEST

10:30AM 25 STARTS BEING USED ON PATIENTS?

10:30AM 1 A. THE QUALITY CONTROL DOESN'T STOP AFTER THE VALIDATION IS
10:30AM 2 COMPLETE.
10:30AM 3 AS MENTIONED, THERE'S DAILY OR PER SHIFT QC THAT NEEDS TO
10:30AM 4 BE RUN BEFORE YOU COULD RUN PATIENT SAMPLES.
10:30AM 5 THERE IS LONGITUDINAL QC, LEVEY-JENNINGS. THERE IS
10:30AM 6 INSTRUMENT MAINTENANCE. THERE ARE A NUMBER OF THINGS THAT HAVE
10:30AM 7 TO BE DONE TO ENSURE QUALITY AFTER VALIDATION IS COMPLETE.
10:30AM 8 Q. AND YOU TESTIFIED DURING CROSS-EXAMINATION ABOUT CHANGES
10:30AM 9 THAT YOU WOULD SOMETIMES SEE MADE TO THERANOS ASSAYS AFTER
10:30AM 10 VALIDATION.
10:30AM 11 DO YOU RECALL THAT?
10:30AM 12 A. YES.
10:30AM 13 Q. AND CAN YOU EXPLAIN WHAT YOU WERE REFERRING TO THERE?
10:30AM 14 A. BECAUSE OF THE PROBLEMS WITH THE THERANOS TESTS, R&D WAS
10:30AM 15 CONSTANTLY MAKING CHANGES TO THE INSTRUMENTATION, THE
10:31AM 16 CHEMISTRY, THE SOFTWARE OF THE INSTRUMENTS.
10:31AM 17 WHENEVER YOU HAVE ANY ONE OF THOSE CHANGES, YOU HAVE TO
10:31AM 18 REVALIDATE THE TESTS BECAUSE IT'S A BRAND NEW TEST.
10:31AM 19 Q. AND IS THAT SOMETHING THAT YOU SAW HAPPEN FREQUENTLY AT
10:31AM 20 THERANOS?
10:31AM 21 A. YES.
10:31AM 22 Q. THAT REVALIDATION WORK AND THOSE CHANGES TO THE ASSAYS,
10:31AM 23 DID THAT CREATE ANY CHALLENGES FOR YOU IN YOUR ROLE TRYING TO
10:31AM 24 ENSURE ACCURACY?
10:31AM 25 A. THERE WAS NO TRANSPARENCY REGARDING WHAT VERSION OF THE

10:31AM 1 TEST WAS BEING RUN, WHAT CHANGES HAD BEEN MADE, AND IT WAS
10:31AM 2 ESSENTIALLY IMPOSSIBLE FOR ME TO KEEP UP AND TO REVALIDATE
10:31AM 3 EVERY NEW TWEAK ON THE TEST.

10:31AM 4 Q. ON THAT SAME TOPIC OF ASSAY VALIDATION, YOU'VE ALSO SEEN
10:31AM 5 SOME EXAMPLES OF ASSAY DEVELOPMENT REPORTS.

10:31AM 6 DO YOU RECALL THAT?

10:31AM 7 A. YES.

10:31AM 8 Q. IS AN ASSAY DEVELOPMENT REPORT SUFFICIENT FOR AN ASSAY TO
10:32AM 9 BE APPROVED AND USED ON PATIENTS?

10:32AM 10 A. NO. I'M NOT EVEN SURE WHAT COMPONENTS WENT INTO THE ASSAY
10:32AM 11 DEVELOPMENT REPORT.

10:32AM 12 I MEAN, THE ANTIBODIES, THE CHEMISTRIES, THE METHODS MAY
10:32AM 13 HAVE BEEN COMPLETELY DIFFERENT, SO I'M JUST NOT SURE WHAT THE
10:32AM 14 RELEVANCE OF THE REPORT IS TO THE ACTUAL VALIDATION.

10:32AM 15 Q. SO AS A LAB DIRECTOR, IF YOU'RE TRYING TO ENSURE THAT THE
10:32AM 16 TEST THAT YOU'RE OFFERING IS ACCURATE, DO YOU LOOK BACK AT THE
10:32AM 17 ASSAY DEVELOPMENT REPORT FOR THAT SPECIFICALLY?

10:32AM 18 A. NO, SIR.

10:32AM 19 Q. WHAT DOCUMENT DO YOU RELY UPON FOR THAT?

10:32AM 20 A. THE VALIDATION REPORT.

10:32AM 21 Q. WHEN IT CAME TO THE THERANOS ASSAYS AND THEIR VALIDATION,
10:32AM 22 YOU TESTIFIED THAT YOU SIGNED MANY VALIDATION REPORTS FOR THOSE
10:32AM 23 ASSAYS; CORRECT?

10:32AM 24 A. YES, I DID.

10:33AM 25 Q. AND WHEN YOU SIGNED THEM, YOU WERE SATISFIED THAT THOSE

10:33AM 1 WERE SUFFICIENT FOR PATIENT USE?

10:33AM 2 A. THOSE REPORTS ARE RAN UNDER IDEAL CONDITIONS BY R&D, AND I

10:33AM 3 RELIED ON THOSE FOLKS TO PRESENT ACCURATE DATA, IN OTHER WORDS,

10:33AM 4 DATA THAT REFLECTED WHAT -- THE DATA THAT THEY'RE ACTUALLY

10:33AM 5 GETTING WHEN THEY'RE RUNNING THE VALIDATION.

10:33AM 6 SO BASED ON ALL OF THAT, YES, I DIDN'T HAVE ANY GROUNDS TO

10:33AM 7 REJECT THE VALIDATION, YES.

10:33AM 8 Q. AND BASED ON THE DATA IN THE VALIDATION REPORTS, DID THE

10:33AM 9 ASSAYS MEET THE STANDARDS IN YOUR VIEW?

10:33AM 10 A. YES, THEY DID.

10:33AM 11 Q. AND ONCE THE ASSAYS STARTED BEING USED ON PATIENTS, DID

10:33AM 12 THEY CONTINUE TO MEET THE APPLICABLE STANDARDS IN YOUR VIEW AS

10:33AM 13 LAB DIRECTOR?

10:33AM 14 A. NO, THEY DID NOT.

10:33AM 15 Q. YOU TESTIFIED PREVIOUSLY THAT -- SO I WANT TO TALK MORE

10:33AM 16 ABOUT THE DISCONNECT BETWEEN WHAT YOU SAW IN THE VALIDATION

10:33AM 17 REPORTS VERSUS WHAT YOU SAW IN THE PERFORMANCE OF THE TESTS.

10:34AM 18 YOU TESTIFIED EARLIER THAT IN YOUR VIEW THE VALIDATION

10:34AM 19 PHASE OF THINGS AT THERANOS WAS RUSHED; IS THAT CORRECT?

10:34AM 20 A. YES.

10:34AM 21 Q. AND WHAT MAKES YOU SAY THAT, OR WHAT MADE YOU FEEL THAT

10:34AM 22 WAY?

10:34AM 23 A. THE APPROACH OF DILUTING BLOOD AND RUNNING THEM ON SIEMENS

10:34AM 24 WAS DECIDED ON I BELIEVE ONLY A MONTH OR TWO BEFORE THE GO LIVE

10:34AM 25 DATE, AND THERE WERE JUST DOZENS AND DOZENS OF TESTS THAT WE

10:34AM 1 WERE REQUIRED TO VALIDATE, AND WE WERE WORKING 24/7 RUNNING
10:34AM 2 THESE SIEMENS INSTRUMENTS DAY AND NIGHT, BLURRY EYED TECHS, AND
10:34AM 3 I WAS GETTING A CONSTANT STREAM OF DATA AND REPORTS TO REVIEW.
10:34AM 4 AND THERE WAS A CLEAR EXPECTATION THAT THIS WAS GOING TO
10:34AM 5 GET DONE.

10:34AM 6 Q. AND WHERE WAS THAT EXPECTATION COMING FROM?

10:35AM 7 A. FROM MR. BALWANI AND MS. HOLMES.

10:35AM 8 Q. I'D LIKE TO SHOW YOU EXHIBIT 7314.

10:35AM 9 THAT'S PREVIOUSLY ADMITTED, YOUR HONOR. MAY WE DISPLAY?

10:35AM 10 THE COURT: YES.

10:35AM 11 BY MR. BOSTIC:

10:35AM 12 Q. DR. ROSENDORFF, DO YOU REMEMBER REVIEWING THIS DOCUMENT
10:35AM 13 DURING CROSS-EXAMINATION?

10:35AM 14 A. YES. THIS IS THE ONE FROM MR. LUCAS.

10:35AM 15 Q. ALL RIGHT.

10:35AM 16 A. DR. YOUNG. I'M SORRY. I APOLOGIZE.

10:35AM 17 Q. AND DO YOU SEE THAT THIS IS FROM MID TO LATE AUGUST 2013,
10:35AM 18 A FEW WEEKS BEFORE THE LAUNCH DATE?

10:35AM 19 A. YES.

10:35AM 20 Q. IF I COULD DRAW YOUR ATTENTION TO THE MIDDLE OF THE PAGE
10:35AM 21 WHERE IT TALKS ABOUT ELISA ASSAYS.

10:35AM 22 DO YOU SEE THAT IN DISCUSSING THE TEST MENU FOR LAUNCH,
10:35AM 23 DR. YOUNG REFERENCES 92 ELISA OR IMMUNOASSAYS?

10:35AM 24 A. YES.

10:35AM 25 Q. AND DO YOU SEE THAT HE SAYS 62 ASSAYS ON EDISON AND 30 ON

10:36AM 1 ADVIA WITH SIEMENS CHEMISTRY?

10:36AM 2 A. YES.

10:36AM 3 Q. DID THERANOS EVER VALIDATE 62 ASSAYS FOR USE ON THE

10:36AM 4 EDISON?

10:36AM 5 A. NO.

10:36AM 6 Q. DO YOU REMEMBER WHAT THE ACTUAL NUMBER WAS IN YOUR

10:36AM 7 RECOLLECTION?

10:36AM 8 A. WHEN I LEFT, I THINK THERE WERE ABOUT 11 OR 12, BUT --

10:36AM 9 Q. AND THAT'S EVEN AT THE TIME THAT YOU LEFT IN NOVEMBER OF

10:36AM 10 THE FOLLOWING YEAR?

10:36AM 11 A. YES.

10:36AM 12 Q. LET'S GO DOWN TO THE BOTTOM OF THIS PAGE, AND THERE'S A

10:36AM 13 PARAGRAPH BEGINNING "ONE MAJOR EFFORT INCLUDES."

10:36AM 14 DO YOU SEE HERE DR. YOUNG WRITES TO MR. BALWANI AND

10:36AM 15 MS. HOLMES, "ONE MAJOR EFFORT INCLUDES VALIDATING ALL 64

10:36AM 16 ELISA'S ON EDISON DEVICES."

10:36AM 17 DO YOU SEE THAT?

10:36AM 18 A. OH, ARE WE STILL ON -- I'M SORRY, MY VOICE IS LOUD ALL OF

10:36AM 19 A SUDDEN.

10:36AM 20 ARE WE STILL ON MR. YOUNG'S EMAIL?

10:37AM 21 Q. YES. DO YOU SEE THIS IS THE SAME EXHIBIT AND EMAIL?

10:37AM 22 A. YES.

10:37AM 23 Q. AND HE WRITES, "ONE MAJOR EFFORT INCLUDES VALIDATING ALL

10:37AM 24 64 ELISA'S ON EDISON DEVICES."

10:37AM 25 A. YES.

10:37AM 1 Q. AND SO AT THIS TIME, A COUPLE WEEKS BEFORE THE LAUNCH, IS
10:37AM 2 IT YOUR RECOLLECTION THAT NO ASSAYS WERE VALIDATED ON THE
10:37AM 3 EDISON ITSELF?
10:37AM 4 A. I DON'T RECALL SPECIFICALLY. IF ANY WERE, IT WOULD HAVE
10:37AM 5 BEEN ONE OR TWO.
10:37AM 6 Q. OKAY. WE CAN SET THAT ASIDE.
10:37AM 7 DO YOU REMEMBER DISCUSSING -- SO BY THE WAY, THE EMAIL
10:37AM 8 THAT WE JUST LOOKED AT ALSO REFERENCES THIRD PARTY DEVICES.
10:37AM 9 DO YOU REMEMBER THAT?
10:37AM 10 A. YES.
10:37AM 11 Q. AND ON CROSS-EXAMINATION, MR. COOPERSMITH ASKED YOU ABOUT
10:37AM 12 THE THROUGHPUT OF THOSE THIRD PARTY DEVICES.
10:37AM 13 DO YOU REMEMBER THAT?
10:37AM 14 A. YES, YES.
10:37AM 15 Q. AND FROM YOUR TIME AT THERANOS OR WORKING AT PREVIOUS
10:38AM 16 LABS, CAN YOU TELL US, FOR EXAMPLE, ABOUT HOW MANY ASSAYS THE
10:38AM 17 SIEMENS ADVIA WAS ABLE TO RUN IN AN HOUR OR IN A DAY, OR CAN
10:38AM 18 YOU TELL US HOW MUCH HIGHER ITS THROUGHPUT WAS COMPARED TO THE
10:38AM 19 EDISON?
10:38AM 20 A. SO IT'S THE ADVIA 1800, AND THE 1800 REFERS TO HOW MANY
10:38AM 21 SAMPLES CAN BE RUN.
10:38AM 22 I DON'T REMEMBER WHAT THE TIME PERIOD IS FOR THOSE 1800,
10:38AM 23 BUT THE SIEMENS -- SO YOU'RE ASKING ABOUT SIEMENS VERSUS
10:38AM 24 MODIFIED SIEMENS?
10:38AM 25 Q. I'M ACTUALLY -- WELL, YOU CAN GIVE ME A DIFFERENT ANSWER

10:38AM 1 IF IT'S DIFFERENT FOR BOTH.

10:38AM 2 BUT I'M ASKING ABOUT THE DEVICE IN GENERAL.

10:38AM 3 A. THE SIEMENS INSTRUMENTS HAD MUCH HIGHER THROUGHPUT AND

10:38AM 4 MUCH HIGHER RELIABILITY.

10:38AM 5 Q. DO YOU HAVE EXHIBIT 204 IN ONE OF THE DEFENSE BINDERS? IT

10:39AM 6 MIGHT BE IN VOLUME 1.

10:39AM 7 A. YES.

10:39AM 8 Q. AND DO YOU RECALL THAT THIS WAS THE OPERATOR'S MANUAL FOR

10:39AM 9 THE SIEMENS ADVIA 1800?

10:39AM 10 A. YES.

10:39AM 11 Q. CAN I ASK YOU TO LOOK AT PAGE 13 OF THAT DOCUMENT?

10:39AM 12 A. YES.

10:39AM 13 Q. AND AT THE TOP THERE'S A SECTION, SYSTEM OVERVIEW.

10:39AM 14 DO YOU SEE THAT?

10:39AM 15 A. YES, I DO.

10:39AM 16 Q. AND DOES THAT REFRESH YOUR RECOLLECTION AS TO THE

10:39AM 17 THROUGHPUT LEVEL OF THE SIEMENS ADVIA 1800?

10:39AM 18 A. YES. IT'S 1800 TESTS PER HOUR.

10:39AM 19 Q. AND HOW MANY TESTS, APPROXIMATELY, WAS THE EDISON ABLE TO

10:39AM 20 RUN IN ONE HOUR?

10:39AM 21 A. ONE IF YOU WERE LUCKY.

10:39AM 22 Q. I'D LIKE TO SHOW YOU EXHIBIT 9921, WHICH I BELIEVE WAS

10:40AM 23 ALREADY ADMITTED.

10:40AM 24 MAY WE DISPLAY, YOUR HONOR?

10:40AM 25 THE COURT: YES.

10:40AM 1 BY MR. BOSTIC:

10:40AM 2 Q. DR. ROSENDORFF, DO YOU REMEMBER REVIEWING THIS DOCUMENT

10:40AM 3 WITH MR. COOPERSMITH?

10:40AM 4 A. YES, I DO.

10:40AM 5 Q. OKAY. AND THIS DOCUMENT HAS AN EFFECTIVE DATE IN NOVEMBER

10:40AM 6 OF 2011.

10:40AM 7 DO YOU SEE THAT?

10:40AM 8 A. YES, I DO.

10:40AM 9 Q. IS THAT ALMOST TWO YEARS BEFORE THERANOS LAUNCHED ITS

10:40AM 10 TESTING SERVICES?

10:40AM 11 A. YES.

10:40AM 12 Q. AND IF WE COULD LOOK AT THE TOP OF THIS PAGE UNDER TESTING

10:40AM 13 SYSTEMS AND ZOOM IN ON WHAT IT SAYS THERE.

10:40AM 14 DO YOU SEE ABOUT HALFWAY OR TWO-THIRDS OF THE WAY DOWN

10:40AM 15 THAT PARAGRAPH IT SAYS, "THE SYSTEM ENABLES RESULTS IN UNDER AN

10:41AM 16 HOUR WITH PRECISION AND ACCURACY EQUIVALENT TO TRADITIONAL

10:41AM 17 CLINICAL LABORATORY ANALYZERS"?

10:41AM 18 A. YES.

10:41AM 19 Q. DR. ROSENDORFF, AFTER WORKING WITH THOSE DEVICES AND THOSE

10:41AM 20 SYSTEMS FOR MORE THAN A YEAR, WAS THAT YOUR EXPERIENCE WITH

10:41AM 21 THEM?

10:41AM 22 A. THIS IS A LIE.

10:41AM 23 Q. OKAY. WE CAN PUT THAT ASIDE.

10:41AM 24 SO LOOKING BACK AT THE VALIDATION WORK, LET ME ASK WHETHER

10:41AM 25 THOSE VALIDATION REPORTS AND THE VALIDATION DATA WAS ON YOUR

10:41AM 1 MIND THROUGHOUT YOUR TIME AT THERANOS WHEN YOU WERE SEEING
10:41AM 2 ISSUES COME UP WITH THE TESTING ACCURACY?
10:41AM 3 A. YES.
10:41AM 4 Q. AND HOW DID YOU RECONCILE WHAT YOU HAD SEEN IN VALIDATION
10:41AM 5 WITH WHAT YOU WERE SEEING WITH THE ASSAY'S OVERALL PERFORMANCE?
10:41AM 6 A. I COULDN'T. I COULDN'T AT ALL. IT BOTHERED ME. IT
10:42AM 7 PUZZLED ME. I CAME UP WITH THEORIES AS TO WHY THAT WAS
10:42AM 8 HAPPENING. WAS THE VALIDATION DATA REALLY CORRECT? HAD THE
10:42AM 9 TEST CHANGED RADICALLY?
10:42AM 10 I SPOKE TO DR. YOUNG ABOUT IT. HE ALSO WAS BOTHERED BY
10:42AM 11 THE FACT THAT THE TEST RESULTS WERE -- THE RELIABILITY OF THE
10:42AM 12 TESTING WAS NOT MATCHING WHAT WAS IN THE VALIDATION REPORTS.
10:42AM 13 Q. SEEING THE PROBLEMS THAT YOU SAW WITH TESTING ACCURACY AND
10:42AM 14 RELIABILITY, DID THE VALIDATION REPORTS AND THE VALIDATION DATA
10:42AM 15 PROVIDE YOU ANY COMFORT ON THOSE TOPICS?
10:42AM 16 A. NO, THEY DIDN'T.
10:42AM 17 AS I MENTIONED, IT WAS QUESTIONABLE WHETHER THOSE RESULTS
10:42AM 18 WERE EVEN RELEVANT TO THE TESTS THAT WERE RUNNING AT THE TIME.
10:42AM 19 Q. DO YOU RECALL DURING CROSS-EXAMINATION SEEING A COUPLE
10:42AM 20 EXAMPLES OF EMAILS THAT YOU SENT TO MR. BALWANI OR OTHERS WHERE
10:42AM 21 YOU WERE POSITIVE OR EXCITED ABOUT DEVELOPMENTS AT THERANOS?
10:42AM 22 A. YES. THERE WERE TIMES WHERE I WANTED TO CONVEY ENTHUSIASM
10:43AM 23 AND TO BE ENCOURAGING TO MY COWORKERS.
10:43AM 24 Q. WERE THOSE POSITIVE FEELINGS GENUINE THAT YOU CONVEYED IN
10:43AM 25 THE EMAILS?

10:43AM 1 A. YES.

10:43AM 2 Q. DID THAT POSITIVE FEELING LAST THROUGHOUT YOUR TIME AT THE

10:43AM 3 COMPANY?

10:43AM 4 A. NO, IT DID NOT.

10:43AM 5 Q. IN SPEAKING TO MR. BALWANI, DID YOU LIMIT YOURSELF TO

10:43AM 6 EXPRESSING POSITIVE VIEWS ONLY, OR DID YOU ALSO MAKE HIM AWARE

10:43AM 7 OF YOUR CONCERNS ABOUT THE PROBLEMS THAT YOU WERE SEEING?

10:43AM 8 A. MOST OF MY COMMUNICATION WITH MR. BALWANI WAS ABOUT

10:43AM 9 PROBLEMS AND CONCERNS.

10:43AM 10 Q. DO YOU RECALL THAT ON CROSS-EXAMINATION YOU WERE SHOWN A

10:43AM 11 LAB DIRECTOR ATTESTATION THAT YOU SIGNED ACKNOWLEDGING YOUR

10:43AM 12 RESPONSIBILITY FOR THE ACCURACY AND RELIABILITY OF THERANOS

10:43AM 13 TESTS?

10:43AM 14 A. YES, I RECALL.

10:43AM 15 Q. AT THERANOS, WERE YOU EMPOWERED TO DO WHAT NEEDED TO BE

10:43AM 16 DONE TO ENSURE TESTING ACCURACY AND RELIABILITY?

10:44AM 17 A. NO, I WAS NOT.

10:44AM 18 Q. WHAT MAKES YOU SAY THAT?

10:44AM 19 A. I WAS LEFT OUT OF EMAILS. I ESSENTIALLY WAS LIED TO. I

10:44AM 20 KNOW THAT'S A STRONG WORD.

10:44AM 21 I WAS COUNTERMANDED. CHAIN OF COMMAND WAS NOT OBEYED,

10:44AM 22 ET CETERA.

10:44AM 23 Q. AND AS LAB DIRECTOR AT THERANOS, WHO WAS IT AT THE COMPANY

10:44AM 24 WHO DECIDED HOW MUCH POWER AND AUTHORITY YOU HAD?

10:44AM 25 A. MR. BALWANI AND MS. HOLMES.

10:44AM 1 Q. DURING CROSS-EXAMINATION YOU WERE ASKED ABOUT WHETHER
10:44AM 2 THOSE TWO INDIVIDUALS, MR. BALWANI OR MS. HOLMES, HAD EVER
10:44AM 3 ORDERED YOU TO SEND OUT A RESULT THAT YOU KNEW TO BE
10:44AM 4 INACCURATE.

10:44AM 5 DO YOU REMEMBER THAT QUESTION?

10:44AM 6 A. YES, I DO.

10:44AM 7 Q. FIRST OF ALL, WHEN A RESULT IS ABOUT TO BE SENT OUT, IS IT
10:44AM 8 ALWAYS POSSIBLE TO KNOW WHETHER THAT RESULT IS ACCURATE OR
10:45AM 9 INACCURATE?

10:45AM 10 A. MOST OF THE TIME IT'S NOT POSSIBLE TO KNOW. IN FACT,
10:45AM 11 ASSUMING QC PASSES, IT'S IMPOSSIBLE TO KNOW.

10:45AM 12 Q. SO LET ME ASK YOU A DIFFERENT VERSION OF THAT QUESTION,
10:45AM 13 WHICH IS, AT THERANOS, WERE YOU REQUIRED TO RELY ON A TESTING
10:45AM 14 SYSTEM THAT YOU BELIEVED WAS NOT SUFFICIENTLY ACCURATE OR
10:45AM 15 RELIABLE?

10:45AM 16 MR. COOPERSMITH: OBJECTION. LEADING.

10:45AM 17 THE COURT: SUSTAINED.

10:45AM 18 BY MR. BOSTIC:

10:45AM 19 Q. LET ME ASK IT A DIFFERENT WAY.

10:45AM 20 DR. ROSENDORFF, BY THE TIME YOU LEFT THE COMPANY, DID YOU
10:45AM 21 HAVE FAITH IN THE ACCURACY AND RELIABILITY OF THE THERANOS
10:45AM 22 TESTING SYSTEMS?

10:45AM 23 A. I DID NOT.

10:45AM 24 Q. WAS THAT PART OF THE REASON WHY YOU LEFT THE COMPANY?

10:45AM 25 A. THAT WAS THE MAIN REASON.

10:45AM 1 Q. AND WHO WAS IT AT THE COMPANY WHO MADE THE DECISIONS ABOUT
10:45AM 2 WHAT SYSTEMS WOULD BE USED FOR PATIENT TESTING?
10:45AM 3 A. MR. BALWANI.
10:45AM 4 Q. BEFORE -- OR BESIDES LEAVING THE COMPANY, AND BESIDES YOUR
10:46AM 5 TESTIMONY IN THIS CASE, HAVE YOU TAKEN ANY OTHER STEPS IN
10:46AM 6 RESPONSE TO THE PROBLEMS THAT YOU SAW AT THERANOS?
10:46AM 7 A. SORRY. SO AFTER I LEFT THE COMPANY?
10:46AM 8 MR. COOPERSMITH: OBJECTION, YOUR HONOR. RELEVANCE.
10:46AM 9 THE COURT: WAS THAT THE QUESTION, AFTER HE LEFT THE
10:46AM 10 COMPANY?
10:46AM 11 MR. BOSTIC: YES, YOUR HONOR.
10:46AM 12 THE WITNESS: YEAH --
10:46AM 13 THE COURT: EXCUSE ME.
10:46AM 14 THE WITNESS: I'M SORRY.
10:46AM 15 THE COURT: I'M NOT CERTAIN OF THE RELEVANCE OF
10:46AM 16 THAT. I'LL SUSTAIN IT WITHOUT A FOUNDATION.
10:46AM 17 MR. BOSTIC: SO, YOUR HONOR, I THINK THIS IS
10:46AM 18 RELEVANT TO THE IMPORTANCE THAT THIS WITNESS ASCRIBES TO THE
10:46AM 19 ISSUES THAT HE SAW.
10:46AM 20 I CAN ASK IT A DIFFERENT WAY TO TRY TO GET IT BACK.
10:46AM 21 THE COURT: WHY DON'T YOU TRY TO DO THAT. THANK
10:46AM 22 YOU.
10:46AM 23 BY MR. BOSTIC:
10:46AM 24 Q. DR. ROSENDORFF, BASED ON THE PROBLEMS THAT YOU SAW AT
10:46AM 25 THERANOS, WERE YOU SATISFIED SIMPLY WITH SEPARATING YOURSELF

10:46AM 1 FROM THE COMPANY?

10:47AM 2 A. NO. MY CONSCIENCE WAS -- I WAS REALLY BOTHERED BY WHAT I
10:47AM 3 HAD EXPERIENCED AT THE COMPANY.

10:47AM 4 Q. AND DID THAT FEELING AND WHAT YOU HAD SEEN AT THE COMPANY
10:47AM 5 CAUSE YOU TO TAKE ANY ADDITIONAL STEPS?

10:47AM 6 MR. COOPERSMITH: OBJECTION, YOUR HONOR. SAME
10:47AM 7 QUESTION. RELEVANCE.

10:47AM 8 THE COURT: SUSTAINED.

10:47AM 9 BY MR. BOSTIC:

10:47AM 10 Q. DR. ROSENDORFF, IN LEAVING THE COMPANY, OR WHEN YOU LEFT
10:47AM 11 THE COMPANY, DID MR. BALWANI ASK YOU ANY QUESTIONS ABOUT THE
10:47AM 12 VALIDATION WORK THAT HAD PREVIOUSLY BEEN PERFORMED?

10:47AM 13 A. DURING MY TENURE OR AFTER I LEFT? I'M SORRY.

10:47AM 14 Q. AS YOU WERE DECIDING TO LEAVE THE COMPANY.

10:47AM 15 A. AH.

10:47AM 16 NO. I SAID TO MR. BALWANI IN THE LAST DAY THAT IT WASN'T
10:47AM 17 WORTH MY REPUTATION TO STAY AT THE COMPANY.

10:47AM 18 MR. BOSTIC: ONE MOMENT, YOUR HONOR.

10:47AM 19 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

10:48AM 20 MR. BOSTIC: NO FURTHER QUESTIONS AT THIS TIME.

10:48AM 21 THANK YOU.

10:48AM 22 THE COURT: RECROSS.

10:48AM 23 FOLKS, WHY DON'T YOU STAND UP FOR A MOMENT WHILE

10:48AM 24 MR. COOPERSMITH COMES TO THE LECTERN.

10:49AM 25 (STRETCHING.)

10:49AM 1 **RECROSS-EXAMINATION**

10:49AM 2 BY MR. COOPERSMITH:

10:49AM 3 Q. DR. ROSENDORFF, WE MIGHT BE ON THE HOME STRETCH HERE.

10:49AM 4 SO DURING REDIRECT, DO YOU REMEMBER MR. BOSTIC ASKED YOU

10:49AM 5 SOME ADDITIONAL QUESTIONS ABOUT HCG?

10:49AM 6 A. YES.

10:49AM 7 Q. AND HE SHOWED YOU SOME EMAILS. IN FACT, HE SHOWED YOU

10:49AM 8 EXHIBIT 4147, WHICH IS THE MAY 30TH, 2014, EMAIL WHERE YOU

10:49AM 9 DIRECTED THAT HCG TESTING BE STOPPED?

10:49AM 10 A. YES.

10:49AM 11 Q. AND YOU DID THAT BECAUSE YOU HAD QUESTIONS ABOUT THAT

10:49AM 12 ASSAY AT THAT TIME; CORRECT?

10:49AM 13 A. YES.

10:49AM 14 Q. AND YOU DECIDED TO SEND AN EMAIL ORDERING THAT THE EDISON

10:49AM 15 TESTING BE STOPPED; RIGHT?

10:49AM 16 A. YES, YES.

10:49AM 17 Q. OKAY. AND THEN YOU -- MR. BOSTIC SHOWED YOU AN EXHIBIT, I

10:50AM 18 BELIEVE IT WAS EXHIBIT 5418, WHERE THERE WAS AN ISSUE ABOUT

10:50AM 19 WHAT NOTATION WE'VE MADE IN LIS.

10:50AM 20 A. I'M DRAWING A BLANK ON THAT ONE. SORRY.

10:50AM 21 Q. LET'S TAKE A LOOK AT IT SO IT'S EASIER.

10:50AM 22 A. OKAY.

10:50AM 23 Q. SO THIS IS 5418.

10:50AM 24 DO YOU SEE THAT IN FRONT OF YOU?

10:50AM 25 A. YES.

10:50AM 1 Q. AND I MIGHT HAVE BEEN THINKING ABOUT A DIFFERENT EXHIBIT.

10:50AM 2 NO, THIS IS THE ONE?

10:50AM 3 SO DO YOU SEE THAT MS. ALAMDAR SAYS, THIS IS ON JUNE 4TH,

10:50AM 4 2014, AND SHE SAYS, "HI ADAM,

10:50AM 5 "I SEE SOME RESULTS IN LIS FOR HCG (FROM EDISON)" AND THEN

10:50AM 6 THERE'S A PATIENT NAME THAT IS REDACTED. AND IT SAYS, "THE

10:50AM 7 RESULT IS OORL; CAN WE RELEASE THIS PATIENT OR WE ONLY RELEASE

10:51AM 8 HCG FROM IMMULITE?"

10:51AM 9 DO YOU SEE THAT?

10:51AM 10 A. YES.

10:51AM 11 Q. AND THEN THE IMMULITE IS THE PREDICATE MACHINE?

10:51AM 12 A. YES.

10:51AM 13 Q. AND THEN WE ZOOM OUT AGAIN.

10:51AM 14 AND THEN AFTER MR. BALWANI FORWARDED THAT TO DANIEL YOUNG

10:51AM 15 AND DR. PANGARKAR, DO YOU SEE THERE'S AN EMAIL FROM

10:51AM 16 DANIEL YOUNG?

10:51AM 17 A. YES.

10:51AM 18 Q. AND HE SAYS, "BY THE WAY, WE NEVER SWITCHED TO IMMULITE IN

10:51AM 19 LIS -- IT WAS NOT CLEAR TO ME THAT THIS DECISION WAS MADE."

10:51AM 20 RIGHT? AND THEN HE GOES ON.

10:51AM 21 DO YOU SEE THAT?

10:51AM 22 A. YES.

10:51AM 23 Q. AND WHETHER OR NOT THEY SWITCHED TO IMMULITE IN LIS, THIS

10:51AM 24 EMAIL BY ITSELF DOESN'T TELL US WHETHER RESULTS WERE BEING

10:51AM 25 RELEASED TO PATIENTS ON JUNE 4TH; CORRECT?

10:51AM 1 A. SO HODA'S EMAIL SAYING, HEY, YOU KNOW, I SEE SOME RESULTS

10:51AM 2 FOR THE EDISON FOR HCG, I HAVE NO IDEA WHAT TIME PERIOD THOSE

10:51AM 3 RESULTS REFER TO.

10:51AM 4 Q. RIGHT.

10:51AM 5 A. YEAH.

10:51AM 6 Q. THANK YOU.

10:51AM 7 A. YES.

10:51AM 8 Q. AND MY QUESTION IS, JUST TO MAKE SURE IT GETS ANSWERED --

10:52AM 9 A. YES.

10:52AM 10 Q. -- IN THIS EMAIL THAT WE'RE LOOKING AT NOW, AND IF WE JUST

10:52AM 11 ZOOM IN ON IT, IT'S THIS JUNE 4TH EMAIL AT 5:12 P.M., THIS

10:52AM 12 ISSUE ABOUT SWITCHING TO THE IMMULITE IN THE LABORATORY

10:52AM 13 INFORMATION SYSTEM, THE LIS --

10:52AM 14 A. YES.

10:52AM 15 Q. -- WE CAN'T TELL FROM THIS ONE EMAIL WHETHER THE RESULTS

10:52AM 16 WERE BEING RELEASED TO PATIENTS ON JUNE 4TH; CORRECT?

10:52AM 17 A. CORRECT.

10:52AM 18 Q. OKAY. AND IF WE WANTED TO KNOW MORE ABOUT THAT, WE WOULD

10:52AM 19 HAVE TO LOOK AT LIS; RIGHT?

10:52AM 20 A. YES, ABSOLUTELY.

10:52AM 21 Q. OKAY. DR. ROSENDORFF, YOU WERE THEN SHOWN ANOTHER EMAIL,

10:52AM 22 WHICH IS EXHIBIT 13875.

10:52AM 23 CAN WE SEE THAT?

10:52AM 24 AND THIS EMAIL, IF YOU LOOK AT THE VERY BOTTOM ONE, YOU'RE

10:52AM 25 GIVING SOME ADDITIONAL INSTRUCTIONS ON JUNE 4TH, 2014?

10:52AM 1 A. YES.

10:52AM 2 Q. AND THIS WAS JUST A FEW DAYS AFTER YOUR MAY 30TH DIRECTION

10:53AM 3 TO STOP EDISON TESTING?

10:53AM 4 A. YES.

10:53AM 5 Q. AND THEN YOU SAY THAT YOU, CHINMAY -- WHICH IS

10:53AM 6 DR. PANGARKAR; CORRECT?

10:53AM 7 A. YES.

10:53AM 8 Q. -- AND DR. YOUNG, WHO IS DANIEL, DISCUSSED THE PLAN FOR

10:53AM 9 HCG.

10:53AM 10 DO YOU SEE THAT?

10:53AM 11 A. YES.

10:53AM 12 Q. AND THEN YOU SAY, "GOING FORWARD."

10:53AM 13 DO YOU SEE THAT SECTION?

10:53AM 14 A. YES.

10:53AM 15 Q. AND THEN YOU SAY, "CHANGE HCG TO VACUTAINER."

10:53AM 16 RIGHT?

10:53AM 17 A. YES.

10:53AM 18 Q. "RUN ON IMMULITE."

10:53AM 19 A. I MEAN, I HAD ALREADY SAID CHANGE BACK ON MAY 30TH.

10:53AM 20 Q. RIGHT. BUT YOU'RE SAYING IT AGAIN?

10:53AM 21 A. I'M SAYING IT AGAIN, YES.

10:53AM 22 Q. AND THEN NUMBER 2 SAYS, "HOLD RECURRENT CTN ORDERS FOR HCG

10:53AM 23 AND CALL FOR REDRAW ON VACUTAINER AS NEEDED."

10:53AM 24 RIGHT?

10:53AM 25 A. YES.

10:53AM 1 Q. AND SO ANY SAMPLE THAT WAS ALREADY COLLECTED UP TO THAT
10:53AM 2 POINT ON A CTN WOULD BE HELD ACCORDING TO YOUR INSTRUCTIONS;
10:53AM 3 RIGHT?
10:53AM 4 A. YES.
10:53AM 5 Q. OKAY. NOW, LET'S LOOK AT THAT EXHIBIT WE SAW THE OTHER
10:54AM 6 DAY, WHICH IS 20564.
10:54AM 7 AND YOU SEE THIS IS JUST TWO DAYS LATER ON JUNE 6TH?
10:54AM 8 A. YES.
10:54AM 9 Q. AND THEN YOU WROTE IN THE MIDDLE EMAIL THERE AT
10:54AM 10 12:37 P.M., "HODA,
10:54AM 11 "CHINMAY WILL BE IMPLEMENTING A SCRIPT SHORTLY TO
10:54AM 12 REQUALIFY VALID VERSUS INVALID HCG VALUES. STAY TUNED."
10:54AM 13 DO YOU SEE THAT?
10:54AM 14 A. YES.
10:54AM 15 Q. AND THEN IF YOU GO UP TO THE TOP THERE'S AN EMAIL THAT
10:54AM 16 SAYS, "WE ARE WORKING ON," AND THEN THERE'S A NUMBER, "AND WILL
10:54AM 17 LET YOU KNOW WHEN IT IS READY."
10:54AM 18 DO YOU SEE THAT?
10:54AM 19 A. YES.
10:54AM 20 Q. AND THEN DR. PANGARKAR SENDS YOU AN EMAIL AT THE TOP THERE
10:54AM 21 AT 9:06 P.M., UTC.
10:54AM 22 DO YOU SEE THAT?
10:54AM 23 A. YES.
10:54AM 24 Q. AND SO THIS LOOKS LIKE THIS IS AN EMAIL WHERE UTC TIME
10:54AM 25 SHOWS UP IN A THERANOS EMAIL?

10:55AM 1 A. YES.

10:55AM 2 Q. SO THAT CAN HAPPEN APPARENTLY?

10:55AM 3 A. APPARENTLY.

10:55AM 4 Q. AND THEN DR. PANGARKAR WRITES, "THESE PARTICULAR SAMPLES

10:55AM 5 ARE READY TO BE RELEASED. THE LATEST RESULTS THAT YOU CAN

10:55AM 6 RELEASE ARE IN."

10:55AM 7 AND IT GIVES AN S DRIVE LOCATION; RIGHT?

10:55AM 8 A. YES.

10:55AM 9 Q. AND THAT'S A SHARED DRIVE WHERE PEOPLE CAN ACCESS THAT;

10:55AM 10 RIGHT?

10:55AM 11 A. YES.

10:55AM 12 Q. AND LET'S LOOK AT ANOTHER EXHIBIT, WHICH IS 20565, AND

10:55AM 13 THIS IS NOT IN EVIDENCE YET SO JUST LOOK AT IT ON YOUR SCREEN.

10:55AM 14 AND THIS IS AN EMAIL CHAIN BETWEEN YOU AND OTHERS IN THE

10:55AM 15 THERANOS LAB; IS THAT RIGHT?

10:55AM 16 A. YES.

10:55AM 17 Q. AND IT'S ON JUNE 10TH, 2014?

10:55AM 18 A. YES.

10:56AM 19 MR. COOPERSMITH: YOUR HONOR, WE OFFER 20565.

10:56AM 20 MR. BOSTIC: NO OBJECTION.

10:56AM 21 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:56AM 22 (DEFENDANT'S EXHIBIT 20565 WAS RECEIVED IN EVIDENCE.)

10:56AM 23 BY MR. COOPERSMITH:

10:56AM 24 Q. OKAY. LET'S START FROM THE EARLIEST EMAIL IN TIME SO WE

10:56AM 25 CAN GET ORIENTED.

10:56AM 1 DO YOU SEE THERE'S AN EMAIL FROM TINA LIN?

10:56AM 2 DO YOU SEE THAT?

10:56AM 3 A. YES.

10:56AM 4 Q. AND SHE WAS ONE OF THE CLS'S IN THE LAB?

10:56AM 5 A. YES. -- UH, NO. TINA WAS A MATH MAJOR AT BERKELEY, I

10:56AM 6 THINK.

10:56AM 7 Q. OKAY.

10:56AM 8 A. SHE --

10:56AM 9 Q. OKAY. BUT SHE WORKED IN THE CLIA LAB?

10:56AM 10 A. SHE WORKED IN NORMANDY.

10:56AM 11 Q. OKAY. AND WHICH IS PART OF THE CLIA LAB?

10:56AM 12 A. YES.

10:56AM 13 Q. OKAY. AND MS. LYNN WRITES, "HI CLA'S,

10:56AM 14 "CTN FOR NUMBER 89751 WAS CALCULATED TO NOT HAVE ENOUGH

10:56AM 15 PLASMA."

10:56AM 16 DO YOU SEE THAT EMAIL?

10:56AM 17 A. YES.

10:56AM 18 Q. AND THEN THE CTN REFERS TO THE CAPILLARY TUBE AND

10:56AM 19 NANOTAINER; RIGHT?

10:56AM 20 A. YES.

10:56AM 21 Q. AND SO SHE'S REFERRING TO A FINGERSTICK SAMPLE?

10:57AM 22 A. YES.

10:57AM 23 Q. AND THEN IF YOU GO ABOVE THAT --

10:57AM 24 A. SO THAT SAMPLE WOULD HAVE BEEN RUN OUTSIDE OF SOP.

10:57AM 25 Q. OKAY. SHE'S JUST TELLING YOU ABOUT A SAMPLE THAT IS ON

10:57AM 1 FINGERSTICK; RIGHT?

10:57AM 2 A. YES.

10:57AM 3 Q. OKAY. AND THEN ABOVE THAT HODA ALAMDAR WROTE:

10:57AM 4 "HI ADAM,

10:57AM 5 "I BELIEVE I CAN REPORT THIS PATIENT AS GREATER THAN

10:57AM 6 4941."

10:57AM 7 DO YOU SEE THAT?

10:57AM 8 A. YES.

10:57AM 9 Q. AND THEN IT GOES ON TO SAY, "LOOKS LIKE THIS PATIENT CAME

10:57AM 10 BACK AGAIN TODAY AND MOST LIKELY HER RESULTS WILL STILL BE

10:57AM 11 GREATER THAN 4941 SINCE SHE MIGHT BE PREGNANT. SHOULD WE HAVE

10:57AM 12 THE HCG QUANT SAMPLES TO BE COLLECTED VENOUS SO THAT IT THEY

10:57AM 13 CAN BE RUN ON IMMULITE FOR DILUTION."

10:57AM 14 DO YOU SEE THAT?

10:57AM 15 A. YES.

10:57AM 16 Q. AND THEN YOU WROTE BACK TO MS. ALAMDAR, RIGHT ABOVE THAT,

10:57AM 17 YOU WROTE, "YES, PLEASE REPORT AS GREATER THAN 4941, IF THAT IS

10:57AM 18 THE LATEST OORH VALUE."

10:57AM 19 DO YOU SEE THAT?

10:57AM 20 A. YES.

10:57AM 21 Q. AND SO YOU WERE DIRECTING MS. ALAMDAR TO RELEASE THE

10:58AM 22 RESULTS FOR THAT CTN SAMPLE; CORRECT?

10:58AM 23 A. YES.

10:58AM 24 Q. AND THIS IS FOR HCG?

10:58AM 25 A. YES.

10:58AM 1 Q. OKAY. AND NOW IF YOU GO TO THE FIRST PAGE OF THE EXHIBIT,
10:58AM 2 GO TO THE VERY TOP.

10:58AM 3 DO YOU SEE MS. ALAMDAR IS TELLING YOU, "HI ADAM,
10:58AM 4 "THIS PATIENT IS BACK AND HER NEW HCG RESULT IS 3121.1."
10:58AM 5 DO YOU SEE THAT?

10:58AM 6 A. YES.

10:58AM 7 Q. AND SHE SAYS, "I WILL RELEASE THIS PATIENT."
10:58AM 8 RIGHT?

10:58AM 9 A. YES.

10:58AM 10 Q. AND SHE'S TELLING YOU THIS ON JUNE 10TH?
10:58AM 11 A. YES.

10:58AM 12 YOU DON'T REALLY KNOW FROM THE EMAIL HOW THIS WAS RUN,
10:58AM 13 JUST AS AN ASIDE.

10:59AM 14 Q. IT WAS FROM A CTN FINGERSTICK SAMPLE; RIGHT?
10:59AM 15 A. FROM THE LAST EMAIL --

10:59AM 16 Q. LET'S GO TO THE SECOND PAGE OF THE SAME EXHIBIT.
10:59AM 17 SO IN YOUR EMAIL ON JUNE 9TH, 2014, YOU SAY, "YES PLEASE
10:59AM 18 REPORT AS GREATER THAN 4941?"
10:59AM 19 DO YOU SEE THAT?

10:59AM 20 A. YES.

10:59AM 21 Q. AND SO THAT'S WITH REGARDS TO A FINGERSTICK SAMPLE;
10:59AM 22 CORRECT?

10:59AM 23 A. YES.

10:59AM 24 Q. AND THAT'S ON JUNE 9TH?
10:59AM 25 A. YES.

10:59AM 1 Q. AND SO THAT'S ACTUALLY A DAY BEFORE?

10:59AM 2 A. YES.

10:59AM 3 Q. SO, DR. ROSENDORFF, YOU WERE ASKED SOME QUESTIONS ABOUT

11:00AM 4 THE SIEMENS ADVIA.

11:00AM 5 DO YOU RECALL THAT?

11:00AM 6 A. I WAS ASKING?

11:00AM 7 Q. YES -- NO, I'M SORRY. MR. BOSTIC ASKED YOU SOME QUESTIONS

11:00AM 8 ABOUT THE SIEMENS ADVIA ON REDIRECT?

11:00AM 9 A. OH, YES.

11:00AM 10 Q. OKAY. AND IT'S CORRECT THAT THERE IS ALSO DILUTION, OR

11:00AM 11 THERE IS DILUTION INTERNAL TO THAT ADVIA DEVICE; CORRECT?

11:00AM 12 A. I JUST DON'T RECALL HONESTLY. I MEAN, I CAN'T STATE AS A

11:00AM 13 MATTER OF FACT TODAY, YEAH.

11:00AM 14 Q. OKAY. LET'S LOOK AT ONE OF THE PRIOR TESTIMONIES FROM

11:00AM 15 YOU, DR. ROSENDORFF.

11:00AM 16 SO IF YOU COULD LOOK AT EXHIBIT 28053. AND IT SHOULD BE

11:01AM 17 IN THAT PRIOR TESTIMONY BINDER.

11:01AM 18 A. I HAVE IT.

11:01AM 19 Q. IF YOU COULD TURN IN YOUR PRIOR -- IN THAT EXHIBIT 28053

11:01AM 20 TO PAGE 240.

11:02AM 21 A. YES, YES.

11:02AM 22 Q. AND IN PARTICULAR, AT LINE 12.

11:02AM 23 DO YOU SEE IT THERE? LINE 12 THROUGH 14?

11:02AM 24 A. YES.

11:02AM 25 Q. AND DOES THAT REFRESH YOUR MEMORY THAT YOU'VE PREVIOUSLY

11:02AM 1 TESTIFIED THAT THERE IS DILUTION INTERNAL TO THE ADVIA DEVICE?

11:02AM 2 A. YES, THAT DOES REFRESH MY MEMORY.

11:02AM 3 Q. OKAY. AND THAT'S WHAT YOU SAID; RIGHT?

11:02AM 4 A. YES.

11:02AM 5 Q. OKAY. AND IN ADDITION -- WELL, I THINK THAT'S SUFFICIENT.

11:02AM 6 A. SO THIS MEANS DILUTION WOULD HAVE HAPPENED TWICE WITH THE

11:02AM 7 MODIFIED METHODS, ONCE OUTSIDE OF THE INSTRUMENT AND ONCE

11:02AM 8 INSIDE OF THE INSTRUMENT.

11:02AM 9 Q. OKAY. YOU WEREN'T HEAVILY INVOLVED IN THE MODIFICATION OF

11:02AM 10 THE ADVIA MACHINES TO RUN SMALL SAMPLES, WERE YOU?

11:02AM 11 A. NO, I WAS NOT.

11:02AM 12 Q. SO YOU DON'T REALLY KNOW WHAT DILUTION PROTOCOLS WERE

11:02AM 13 CHANGED INTERNALLY TO COMPENSATE FOR THE OUTSIDE DILUTION, DO

11:02AM 14 YOU?

11:02AM 15 A. ARE YOU SAYING THAT I WASN'T FAMILIAR WITH HOW THE ASSAY

11:02AM 16 WAS RUN?

11:02AM 17 Q. WELL, I'M HOPING YOU WERE, DR. ROSENDORFF.

11:03AM 18 BUT MY QUESTION TO YOU IS, ARE YOU -- YOU'RE AWARE, AREN'T

11:03AM 19 YOU, THAT WHEN THE MACHINES WERE MODIFIED, THERE WAS A

11:03AM 20 MODIFICATION OF THE DILUTION PROTOCOL INTERNAL TO THE ADVIA'S?

11:03AM 21 A. NO, I DON'T BELIEVE SO, NO, NOT AT ALL.

11:03AM 22 Q. YOU DON'T THINK THAT'S TRUE?

11:03AM 23 A. NO. THAT'S WRONG.

11:03AM 24 Q. ALL RIGHT.

11:03AM 25 A. THE DILUTIONS HAPPENED BEFORE THE SAMPLES GOT LOADED ON TO

11:03AM 1 THE INSTRUMENT, THE TECANS WOULD BE USED TO -- WOULD USE SALINE
11:03AM 2 OR WATER TO DO THE DILUTIONS.

11:03AM 3 I WAS NOT AWARE OF ANY MODIFICATION TO THE INTERNAL
11:03AM 4 DILUTION PROCEDURE.

11:03AM 5 Q. YOU'RE NOT AWARE?

11:03AM 6 A. NO.

11:03AM 7 Q. OKAY. DR. ROSENDORFF, DO YOU REMEMBER MR. BOSTIC ASKED
11:03AM 8 YOU SOME QUESTIONS DURING REDIRECT ABOUT THE LABORATORY
11:03AM 9 INFORMATION SYSTEM?

11:03AM 10 A. YES.

11:03AM 11 Q. AND HE ASKED YOU ABOUT WHETHER THE LIS AT THERANOS WOULD
11:04AM 12 HAVE PATIENT RESULTS THAT THERANOS DIDN'T CONDUCT AT ALL?

11:04AM 13 A. YES.

11:04AM 14 Q. AND, OF COURSE, IT WOULDN'T; RIGHT?

11:04AM 15 A. IT WOULD NOT.

11:04AM 16 Q. OKAY. BUT WHEN YOU WERE LOOKING INTO A QUESTION, YOU
11:04AM 17 WOULD USE THE LIS AS ONE OF THE TOOLS TO DO YOUR INVESTIGATION;
11:04AM 18 RIGHT?

11:04AM 19 A. YES.

11:04AM 20 Q. AND YOU COULD ACCESS THAT?

11:04AM 21 A. RIGHT.

11:04AM 22 Q. AND THAT YOU WOULD ALSO LOOK AT TIMES AT PATIENT TRENDS;
11:04AM 23 RIGHT?

11:04AM 24 A. YES.

11:04AM 25 Q. AND SO, FOR EXAMPLE, IF THERE WAS A PATIENT ON A

11:04AM 1 PARTICULAR DAY WHERE THERE WAS AN INQUIRY AND YOU WANTED TO

11:04AM 2 KNOW ALL OF THE OTHER PATIENTS WHO HAD THAT SAME ASSAY RUN,

11:04AM 3 COULD YOU LOOK AT LIS AND LEARN THAT INFORMATION; RIGHT?

11:04AM 4 A. YES, I COULD.

11:04AM 5 Q. OKAY. AND SO YOU COULD COMBINE THE INFORMATION FROM LIS

11:04AM 6 WITH OTHER INFORMATION ABOUT HOW THE PATIENT PRESENTED AND SO

11:04AM 7 FORTH TO COME UP WITH SOME CONCLUSIONS ABOUT WHAT HAD OCCURRED;

11:04AM 8 RIGHT?

11:04AM 9 A. YES.

11:04AM 10 Q. AND WITH REGARD TO QUALITY CONTROL, DO YOU REMEMBER THAT

11:05AM 11 MR. BOSTIC ASKED YOU SOME QUESTIONS ABOUT A PRESENTATION THAT

11:05AM 12 MR. GEE PRESENTED ON QUALITY CONTROL?

11:05AM 13 A. ON REDIRECT, YES, YES.

11:05AM 14 Q. RIGHT. AND ALSO WHEN I --

11:05AM 15 A. THAT WAS THE SECOND TIME I HAD SEEN IT TODAY.

11:05AM 16 Q. RIGHT.

11:05AM 17 A. I MEAN IN THIS TRIAL, YEAH.

11:05AM 18 Q. OKAY. AND THERE WAS A NUMBER THAT MR. BOSTIC FOCUSED YOU

11:05AM 19 ON, AS I DID, WHICH WAS THE 2.9 PERCENT CONTROL FAILURE RATE.

11:05AM 20 DO YOU REMEMBER THAT?

11:05AM 21 A. YES.

11:05AM 22 Q. OKAY. AND THEN MR. BOSTIC ASKED YOU SOME QUESTIONS ABOUT

11:05AM 23 HOW THAT SEEMED DIFFERENT THAN ANOTHER EXHIBIT WHICH SHOWED

11:05AM 24 SOME QC FAILURE RESULTS FROM MARCH OF 2014?

11:05AM 25 A. I CAN FULLY EXPLAIN THAT.

11:05AM 1 Q. WELL, LET'S -- LET ME JUST ASK THE QUESTIONS. OKAY?

11:05AM 2 A. UH-HUH.

11:05AM 3 Q. AND THE SAME PERSON COMPILED THOSE TWO DIFFERENT

11:05AM 4 DOCUMENTS; RIGHT?

11:05AM 5 A. YES.

11:05AM 6 Q. AND THAT'S MR. GEE?

11:05AM 7 A. YES.

11:05AM 8 Q. AND, IN FACT, AS YOU SAID THE OTHER DAY WHEN I WAS

11:06AM 9 QUESTIONING YOU, THE QC DATA WAS ONE OF THE THINGS IN LIS;

11:06AM 10 CORRECT?

11:06AM 11 A. YES.

11:06AM 12 Q. OKAY. SO IF WE WANTED TO KNOW EVERYTHING ABOUT QC DURING

11:06AM 13 ANY TIME PERIOD, WE COULD GO TO LIS AND LOOK AT THAT; RIGHT?

11:06AM 14 A. YES.

11:06AM 15 Q. IF WE HAD THE ABILITY TO DO THAT?

11:06AM 16 A. YES.

11:06AM 17 Q. OKAY. AND, DR. ROSENDORFF, SWITCHING TO ANOTHER

11:06AM 18 SUBJECT --

11:06AM 19 A. DO YOU WANT ME TO EXPLAIN OR NOT?

11:06AM 20 Q. WELL, I'M GOING TO ASK YOU THE QUESTIONS, AND THAT'S ALL

11:06AM 21 I'VE GOT ON THAT. OKAY?

11:06AM 22 SO I'M GOING TO GO TO THE NEXT TOPIC.

11:06AM 23 LET'S LOOK AT -- LET'S TALK ABOUT THE INSPECTION BY THE

11:06AM 24 CDPH INSPECTOR.

11:06AM 25 A. OKAY.

11:06AM 1 Q. AND THAT WAS IN DECEMBER OF 2013?

11:06AM 2 A. YES.

11:06AM 3 Q. AND THE -- ON REDIRECT MR. BOSTIC ASKED YOU SOME QUESTIONS

11:06AM 4 ABOUT THAT INSPECTION.

11:06AM 5 DO YOU REMEMBER THAT?

11:06AM 6 A. YES.

11:06AM 7 Q. OKAY. AND YOU TALKED ABOUT SOME PARTITIONS OR DIVIDERS IN

11:07AM 8 THE NORMANDY LAB?

11:07AM 9 A. YES.

11:07AM 10 Q. BUT YOU ACTUALLY, AS WE DISCUSSED THE OTHER DAY, YOU

11:07AM 11 ACTUALLY SHOWED THE INSPECTOR VALIDATION REPORTS FOR THE EDISON

11:07AM 12 DEVICE?

11:07AM 13 A. YES, WE DID.

11:07AM 14 Q. AND FOR THE MODIFIED PREDICATES?

11:07AM 15 A. YES.

11:07AM 16 Q. AND IF THE INSPECTOR HAD ASKED YOU TO SEE ANY PART OF THE

11:07AM 17 CLINICAL LAB, YOU WOULD HAVE SHOWED IT TO HER; RIGHT?

11:07AM 18 A. YES.

11:07AM 19 Q. YOU WOULDN'T HAVE REFUSED TO DO THAT; RIGHT?

11:07AM 20 A. NO.

11:07AM 21 Q. AND IT TURNS OUT SHE DIDN'T ASK THAT?

11:07AM 22 A. SHE DID NOT.

11:07AM 23 Q. SO SHE SAW VALIDATION REPORTS?

11:07AM 24 A. YES.

11:07AM 25 Q. AND SHE KNEW THERE WERE EDISONS -- BASED ON THAT

11:07AM 1 INFORMATION, YOU UNDERSTOOD THAT SHE KNEW THAT THERE WERE THOSE
11:07AM 2 DEVICES BEING RUN IN THE LAB; RIGHT?
11:07AM 3 A. YES.
11:07AM 4 Q. AND SHE DIDN'T ACTUALLY ASK TO SEE THE PHYSICAL DEVICE;
11:07AM 5 RIGHT?
11:07AM 6 A. NO, SHE DID NOT.
11:07AM 7 Q. OKAY. I WANT TO SHOW YOU ANOTHER EXHIBIT, WHICH IS 20306,
11:07AM 8 AND YOU CAN LOOK AT THAT ON YOUR SCREEN.
11:08AM 9 OKAY. DO YOU SEE AT THE BOTTOM THIS IS AN EMAIL STRING
11:08AM 10 FROM THERANOS AROUND OR ON DECEMBER 1ST, 2013?
11:08AM 11 A. YES.
11:08AM 12 Q. OKAY. AND THIS IS RIGHT BEFORE THAT INSPECTION THAT WE
11:08AM 13 JUST DISCUSSED?
11:08AM 14 A. YES.
11:08AM 15 Q. AND THEN DO YOU SEE THERE'S AN EMAIL FROM SCOTT MARMER TO
11:08AM 16 YOU AND OTHERS?
11:08AM 17 A. YES.
11:08AM 18 Q. INCLUDING EDGAR PAZ?
11:08AM 19 A. YES.
11:08AM 20 Q. AND THEN ALSO THE ENTIRE CLIA LAB?
11:08AM 21 A. YES.
11:08AM 22 MR. COOPERSMITH: OKAY. YOUR HONOR, WE OFFER 20306.
11:08AM 23 MR. BOSTIC: NO OBJECTION.
11:08AM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
11:08AM 25 (DEFENDANT'S EXHIBIT 20306 WAS RECEIVED IN EVIDENCE.)

11:08AM 1 BY MR. COOPERSMITH:

11:08AM 2 Q. OKAY. SO LET'S GO TO THE EARLIEST EMAIL IN TIME.

11:08AM 3 AND YOU WROTE ON DECEMBER 1ST, 2013, "PLEASE GRANT

11:09AM 4 PERMISSION FOR CLIA INSPECTORS TO VISIT US ON DECEMBER 3RD AT

11:09AM 5 10:30 A.M. THEY WILL BE DOING DOCUMENT REVIEW IN CONFERENCE

11:09AM 6 ROOM 1776, AND WALK THROUGH THE UPSTAIRS CLIA LAB AS WELL AS

11:09AM 7 NORMANDY CLIA LAB."

11:09AM 8 DO YOU SEE THAT?

11:09AM 9 A. YES.

11:09AM 10 Q. AND "THE VISIT SHOULD LAST ABOUT 4 HOURS."

11:09AM 11 A. YES.

11:09AM 12 Q. AND YOU'RE GIVING INSTRUCTIONS TO VARIOUS THERANOS STAFF

11:09AM 13 PEOPLE THAT THAT IS GOING TO OCCUR; RIGHT?

11:09AM 14 A. YES.

11:09AM 15 Q. AND ABOVE THAT DO YOU SEE THERE'S AN EMAIL FROM EDGAR PAZ,

11:09AM 16 AND HE SAYS, "HELLO SUNNY,

11:09AM 17 "PLEASE READ EMAIL BELOW AND LET ME KNOW HOW YOU WOULD

11:09AM 18 LIKE US TO PROCEED WITH THE CLIA INSPECTOR VISIT."

11:09AM 19 DO YOU SEE THAT?

11:09AM 20 A. YES.

11:09AM 21 Q. AND THEN ABOVE THAT MR. BALWANI WRITES, "APPROVED."

11:09AM 22 "SCOTT CAN APPROVE SUCH VISITS."

11:09AM 23 DO YOU SEE THAT?

11:09AM 24 A. YES.

11:09AM 25 Q. AND THEN GOING ABOVE THAT, DO YOU SEE THERE'S A

11:09AM 1 DECEMBER 1ST, 2013, EMAIL FROM MR. PAZ?

11:10AM 2 A. YES.

11:10AM 3 Q. AND HE WRITES, "CORRECT, WOULD YOU LIKE FOR US TO PROVIDE

11:10AM 4 SECURITY ESCORT DURING THE VISIT INTO BOTH CLIA AREAS?"

11:10AM 5 RIGHT?

11:10AM 6 A. YES, I SEE THAT.

11:10AM 7 Q. THAT'S NORMANDY AND THEN THE UPSTAIRS LAB AS WELL?

11:10AM 8 A. YES.

11:10AM 9 Q. AND THEN YOU SEE ABOVE THAT MR. BALWANI WROTE BACK TO

11:10AM 10 MR. PAZ AND SAID "NO"?

11:10AM 11 DO YOU SEE THAT?

11:10AM 12 A. I DON'T REALLY KNOW WHAT HE MEANS.

11:10AM 13 Q. YOU JUST SEE THAT MR. BALWANI RESPONDED "NO" TO MR. PAZ'S

11:10AM 14 QUESTION; RIGHT?

11:10AM 15 A. YES.

11:10AM 16 Q. AND THE QUESTION WAS, "WOULD YOU LIKE FOR US TO PROVIDE

11:10AM 17 SECURITY ESCORT DURING THE VISIT INTO BOTH CLIA AREAS?"

11:10AM 18 DO YOU SEE THAT?

11:10AM 19 A. YES, I SEE THE WORD AND -- I SEE THE WORD "NO," YES.

11:10AM 20 Q. OKAY. DR. ROSENDORFF, ARE YOU SAYING IN YOUR TESTIMONY

11:11AM 21 TODAY THAT YOU RELEASED RESULTS TO PATIENTS WHILE YOU WERE A

11:11AM 22 LAB DIRECTOR AT THERANOS THAT YOU DID NOT THINK WERE ACCURATE?

11:11AM 23 A. I'M A LITTLE CONFUSED BY THE DOUBLE NEGATIVE THERE.

11:11AM 24 Q. OKAY. LET ME SEE IF I CAN HELP YOU.

11:11AM 25 A. YEAH.

11:11AM 1 Q. OKAY. IS IT YOUR TESTIMONY UNDER OATH, DR. ROSENDORFF,
11:11AM 2 THAT WHILE YOU WERE AT THERANOS, THAT YOU RELEASED OR ALLOWED
11:11AM 3 THE RELEASE OF RESULTS TO PATIENTS THAT YOU DID NOT THINK WERE
11:11AM 4 ACCURATE?

11:11AM 5 A. I NEVER RELEASED RESULTS THAT I THOUGHT WERE INACCURATE,
11:11AM 6 NO.

11:11AM 7 Q. YOU NEVER DID THAT?

11:11AM 8 A. NO.

11:12AM 9 Q. BECAUSE YOU WOULDN'T DO THAT?

11:12AM 10 A. NO, I WOULD NOT.

11:12AM 11 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

11:12AM 12 THE COURT: MR. BOSTIC?

11:12AM 13 MR. BOSTIC: VERY BRIEFLY, YOUR HONOR.

11:12AM 14 **FURTHER REDIRECT EXAMINATION**

11:12AM 15 BY MR. BOSTIC:

11:12AM 16 Q. DR. ROSENDORFF, DURING YOUR CONVERSATION WITH
11:12AM 17 MR. COOPERSMITH JUST NOW, YOU OFFERED TO PROVIDE AN EXPLANATION
11:12AM 18 AS TO THE DIFFERENCES BETWEEN THE QC FAILURE NUMBERS WE SAW IN
11:12AM 19 THE SLIDE PRESENTATION VERSUS THAT EMAIL IN MARCH 2014.

11:12AM 20 DO YOU RECALL THAT?

11:12AM 21 A. YES, I DO.

11:12AM 22 Q. I WOULD LIKE TO HEAR THAT EXPLANATION. CAN YOU EXPLAIN?

11:12AM 23 A. OH, SURE.

11:12AM 24 SO MR. GEE'S QC FAILURE RATE FOR Q1 ON THE THERANOS
11:13AM 25 METHODS INCLUDES BOTH EDISON AND MODIFIED SIEMENS.

11:13AM 1 THE EMAIL WE WERE REVIEWING PREVIOUSLY WITH THE 26 OR
11:13AM 2 20 PERCENT FAILURE RATE, THAT'S EDISONS ONLY.
11:13AM 3 HOWEVER, THERANOS WAS RUNNING NEAT QC, BIORAD QC ON THE
11:13AM 4 SIEMENS INSTRUMENT AND USING THAT QC FOR THE MODIFIED SIEMENS
11:13AM 5 TEST.
11:13AM 6 SO BECAUSE THERE WERE SO MANY MORE OF THOSE QC SAMPLES RUN
11:13AM 7 THAN THE EDISON QC SAMPLES, THAT THAT WOULD ARTIFICIALLY PAINT
11:13AM 8 A ROSY PICTURE OF HOW THE QC WAS ACTUALLY -- DOES THAT MAKE
11:13AM 9 SENSE TO YOU?
11:13AM 10 Q. I THINK SO.
11:13AM 11 LET ME ASK, IN YOUR EXPERIENCE WITH THE EDISONS AND THE
11:13AM 12 MODIFIED THIRD PARTY DEVICES, WHICH PERFORMED BETTER ON QC?
11:13AM 13 MR. COOPERSMITH: OBJECTION. BEST EVIDENCE.
11:13AM 14 THE COURT: THIS CALLS FOR HIS OBSERVATIONS, HIS
11:14AM 15 PERSONAL OBSERVATIONS?
11:14AM 16 MR. BOSTIC: EXACTLY, YOUR HONOR.
11:14AM 17 THE COURT: YOU CAN ANSWER THE QUESTION.
11:14AM 18 THE WITNESS: AS I SAID, THE QC FOR THE MODIFIED
11:14AM 19 SIEMENS WAS NO DIFFERENT FROM THE QC FOR THE UNMODIFIED
11:14AM 20 SIEMENS.
11:14AM 21 THERE WAS NO DILUTION OF THOSE SAMPLES. THERE SHOULD HAVE
11:14AM 22 BEEN BECAUSE PATIENT SAMPLES WERE BEING DILUTED, TOO.
11:14AM 23 BY MR. BOSTIC:
11:14AM 24 Q. I SEE. ARE YOU SAYING THERE WAS A DIFFERENCE BETWEEN HOW
11:14AM 25 QC WAS RUN ON THE MODIFIED INSTRUMENTS VERSUS HOW PATIENT

11:14AM 1 SAMPLES WERE RUN ON THE MODIFIED INSTRUMENTS?

11:14AM 2 A. YES, YES, YES.

11:14AM 3 MR. COOPERSMITH: OBJECTION. MOVE TO STRIKE.

11:14AM 4 THE COURT: OVERRULED. THE ANSWER CAN REMAIN.

11:14AM 5 BY MR. BOSTIC:

11:14AM 6 Q. AND FINALLY, DR. ROSENDORFF, WE'VE DISCUSSED A COUPLE OF

11:14AM 7 TIMES YOUR DECISION IN LATE MAY TO DISCONTINUE HCG TESTING ON

11:14AM 8 THE EDISON.

11:14AM 9 DO YOU REMEMBER THAT?

11:14AM 10 A. YES.

11:14AM 11 Q. MR. COOPERSMITH JUST SHOWED YOU SOME EMAILS INDICATING

11:14AM 12 THAT HCG TESTING WAS STILL CONTINUING ON THE EDISON EVEN IN

11:15AM 13 JUNE OF 2014.

11:15AM 14 DID YOU SEE THAT?

11:15AM 15 A. YES.

11:15AM 16 Q. MY QUESTION FOR YOU IS, DID YOU DECIDE TO RESUME OR

11:15AM 17 CONTINUE HCG TESTING ON THE EDISON AS LAB DIRECTOR AT THERANOS?

11:15AM 18 A. NO, I DID NOT.

11:15AM 19 Q. NO FURTHER QUESTIONS. THANK YOU.

11:15AM 20 MR. COOPERSMITH: JUST BRIEFLY, YOUR HONOR. THANK

11:15AM 21 YOU.

11:15AM 22 **FURTHER RECROSS-EXAMINATION**

11:15AM 23 BY MR. COOPERSMITH:

11:15AM 24 Q. SO JUST NOW MR. BOSTIC ASKED YOU SOME QUESTIONS ABOUT THE

11:15AM 25 QC DATA THAT MR. GEE PRESENTED.

11:15AM 1 A. YES.

11:15AM 2 Q. AND YOU OFFERED AN EXPLANATION; RIGHT?

11:15AM 3 A. YES.

11:15AM 4 Q. OKAY. ARE YOU SAYING THAT YOU KNEW ABOUT THIS ISSUE AT

11:15AM 5 THE TIME IN THE MIDDLE OF 2014?

11:15AM 6 A. WHICH ISSUE ARE YOU REFERRING TO?

11:15AM 7 Q. WELL, YOU JUST DESCRIBED AN ISSUE ABOUT NEAT SAMPLES BEING

11:15AM 8 RUN ON THE QC FOR THE MODIFIED PREDICATES; RIGHT?

11:15AM 9 A. YES.

11:15AM 10 Q. AND YOU'RE NOW SAYING TODAY THAT YOU THINK THAT THAT WAS

11:16AM 11 NOT APPROPRIATE?

11:16AM 12 A. YES.

11:16AM 13 Q. AND ARE YOU SAYING THAT YOU KNEW THAT AT THE TIME,

11:16AM 14 DR. ROSENDORFF?

11:16AM 15 A. I DON'T RECALL.

11:16AM 16 Q. BUT YOU COULD HAVE TOLD MR. GEE, IF YOU WANTED TO, DO SOME

11:16AM 17 DIFFERENT METHOD OF QC IF YOU WANTED TO; RIGHT?

11:16AM 18 A. HE WASN'T THE ONE RUNNING THE QC, SIR. HE WAS JUST

11:16AM 19 REPORTING IT.

11:16AM 20 Q. WELL, I THINK WE SAW LAST WEEK THAT YOU WERE THE ONE WHO

11:16AM 21 CIRCULATED THE QC PROTOCOL; RIGHT?

11:16AM 22 A. THERE WERE A NUMBER OF QC PROTOCOLS SHOWN.

11:16AM 23 Q. AND WE LOOKED AT ONE THAT YOU CIRCULATED?

11:16AM 24 A. I THINK SO.

11:16AM 25 Q. SETTING THE QC POLICY FOR THERANOS?

11:16AM 1 A. I BELIEVE SO.

11:16AM 2 Q. AND IF YOU WANTED TO CHANGE THAT PROTOCOL, YOU COULD HAVE

11:16AM 3 SENT ANOTHER QC POLICY THAT CHANGED WHATEVER YOU WANTED TO

11:16AM 4 CHANGE; CORRECT?

11:16AM 5 A. WELL, THE QC POLICY NEVER SPELLED OUT, HEY, DILUTE THE QC

11:16AM 6 SAMPLES THE SAME WAY YOU'RE DILUTING THE PATIENT SAMPLES.

11:16AM 7 Q. IF YOU WANTED TO INSTRUCT THE LAB TO DO A DIFFERENT

11:16AM 8 DILUTION PROTOCOL, YOU COULD HAVE DONE THAT; RIGHT?

11:17AM 9 A. YES.

11:17AM 10 MR. COOPERSMITH: NOTHING FURTHER, YOUR HONOR.

11:17AM 11 MR. BOSTIC: NOTHING FURTHER, YOUR HONOR.

11:17AM 12 THE COURT: MAY THIS WITNESS BE EXCUSED?

11:17AM 13 MR. COOPERSMITH: YES, YOUR HONOR.

11:17AM 14 MR. BOSTIC: NO, YOUR HONOR.

11:17AM 15 THE COURT: YOU'RE EXCUSED, SIR. YOU MAY LEAVE

11:17AM 16 THOSE BINDERS THERE.

11:17AM 17 THE WITNESS: OKAY.

11:17AM 18 THE COURT: WHY DON'T WE TAKE OUR MORNING BREAK NOW,

11:17AM 19 LADIES AND GENTLEMEN. LET'S TAKE OUR MORNING BREAK. LET'S

11:17AM 20 TAKE 30 MINUTES, PLEASE.

11:17AM 21 AND LET ME TELL YOU, IT MAY BE -- I HAVE SOME QUESTIONS

11:17AM 22 FOR THE LAWYERS ABOUT SOME ADDITIONAL EVIDENCE, SO IT MIGHT BE

11:17AM 23 A LITTLE LONGER. I'M JUST TELLING YOU THAT.

11:17AM 24 ALSO, MY SENSE IS THAT WE'RE GOING TO BREAK TODAY NO LATER

11:17AM 25 THAN 2:45, COUNSEL, 2:45 THIS AFTERNOON.

11:17AM 1 SO ENJOY YOUR BREAK.

11:17AM 2 (JURY OUT AT 11:17 A.M.)

11:18AM 3 THE COURT: ALL RIGHT. PLEASE BE SEATED. THANK

11:18AM 4 YOU.

11:18AM 5 THE RECORD SHOULD REFLECT THAT OUR JURY HAS LEFT FOR A

11:18AM 6 MORNING BREAK. ALL COUNSEL ARE PRESENT.

11:18AM 7 THE GOVERNMENT HAS ANOTHER WITNESS TO CALL THEN?

11:18AM 8 MR. LEACH: YES, YOUR HONOR.

11:18AM 9 THE COURT: AND IT'S MS. PETERSON?

11:18AM 10 MR. LEACH: IT IS, YOUR HONOR.

11:18AM 11 THE COURT: THANK YOU. SHOULD WE DISCUSS ISSUES

11:18AM 12 REGARDING HER TESTIMONY NOW?

11:18AM 13 MR. LEACH: SURE.

11:18AM 14 MR. COOPERSMITH: THAT WOULD BE HELPFUL, YOUR HONOR.

11:18AM 15 THE COURT: SURE. OKAY. SO THE GOVERNMENT WILL

11:19AM 16 CALL MS. PETERSON NEXT.

11:19AM 17 MR. LEACH: YES, YOUR HONOR.

11:19AM 18 THE COURT: ALL RIGHT. THANK YOU.

11:19AM 19 AND DO YOU HAVE SOME DISCUSSION POINTS?

11:19AM 20 MR. COOPERSMITH: YES, YOUR HONOR, THANK YOU.

11:19AM 21 JUST THREE THINGS.

11:19AM 22 THE FIRST ISSUE IS THAT WE RECEIVED AN FBI 302 LAST NIGHT

11:19AM 23 FROM MR. LEACH OF A VERY RECENT INTERVIEW WITH MS. PETERSON,

11:19AM 24 AND THERE'S INFORMATION IN THERE ABOUT HOW MS. PETERSON SAID

11:19AM 25 SHE WAS UNAWARE OF THE ROMANTIC RELATIONSHIP BETWEEN

11:19AM 1 MR. BALWANI AND MS. HOLMES.

11:19AM 2 AND I CONFERRED WITH MR. LEACH EARLIER THIS MORNING AND I

11:19AM 3 HAVE BEEN INFORMED THAT THE GOVERNMENT DOES, IF ALLOWED, INTEND

11:19AM 4 TO INQUIRE INTO THAT ISSUE, WHETHER MS. PETERSON WAS AWARE OF

11:19AM 5 THE RELATIONSHIP, AND PRESUMABLY SHE WOULD SAY NO.

11:19AM 6 AND THEN PERHAPS MR. LEACH WOULD INQUIRE INTO THE REASONS

11:20AM 7 WHY SHE MIGHT OR MIGHT NOT CONSIDER THAT IMPORTANT.

11:20AM 8 WE DON'T THINK THAT'S A PROPER SUBJECT.

11:20AM 9 I BELIEVE THAT THIS WAS A SUBJECT THAT WAS DESCRIBED, YOU

11:20AM 10 KNOW, IT SEEMS LIKE YEARS AGO NOW, BUT IT'S MAYBE ABOUT TWO

11:20AM 11 YEARS AGO IN THE GOVERNMENT'S 404(B) NOTICES IN 2020, THAT THIS

11:20AM 12 MIGHT BE AN AREA. OBVIOUSLY THIS IS NOT SOMETHING CHARGED IN

11:20AM 13 THE INDICTMENT, YOU KNOW, HIDING A RELATIONSHIP.

11:20AM 14 WE JUST DON'T THINK THIS IS A PROPER SUBJECT. WE THINK

11:20AM 15 IT'S NOT RELEVANT UNDER 401.

11:20AM 16 AND WE ALSO THINK IT'S MORE PREJUDICIAL THAN PROBATIVE

11:20AM 17 UNDER 403 BECAUSE MS. PETERSON IS REALLY HERE TO TALK ABOUT

11:20AM 18 WHAT SHE LEARNED ABOUT THE COMPANY AND, IN HER VIEW, WHY RDV,

11:20AM 19 THE DEVOS FAMILY COMPANY, INVESTED IN THERANOS.

11:20AM 20 AND AS TO WHETHER SHE WAS AWARE OF A RELATIONSHIP OR NOT

11:20AM 21 SHOULDN'T REALLY HAVE ANY BEARING ON THIS.

11:20AM 22 AND, FRANKLY, YOUR HONOR, THE FACT THAT MR. BALWANI AND

11:20AM 23 MS. HOLMES TRIED TO KEEP THINGS PROFESSIONAL, YOU KNOW, AT THE

11:21AM 24 OFFICE AND WEREN'T ENGAGING IN PUBLIC DISPLAYS OF AFFECTION IN

11:21AM 25 FRONT OF MS. PETERSON OR TELLING HER VERBALLY THAT, I DON'T

11:21AM 1 THINK THAT REALLY BEARS ON THE CHARGES IN THIS CASE.

11:21AM 2 IN A NUTSHELL, WE DON'T THINK THAT SHOULD BE ALLOWED.

11:21AM 3 THE COURT: THANK YOU.

11:21AM 4 SO IT'S THE QUESTIONS REGARDING WHETHER OR NOT

11:21AM 5 MS. PETERSON HAD KNOWLEDGE OF A RELATIONSHIP BETWEEN

11:21AM 6 MR. BALWANI AND MS. HOLMES?

11:21AM 7 MR. COOPERSMITH: BASED ON DISCOVERY, I BELIEVE HER

11:21AM 8 ANSWER TO THAT WOULD BE NO, SHE DID NOT. RIGHT?

11:21AM 9 AND THEN PRESUMABLY, I DON'T WANT TO PUT QUESTIONS IN

11:21AM 10 MR. LEACH'S MOUTH, BUT MY UNDERSTANDING FROM THE 302 AND A

11:21AM 11 LITTLE BIT FROM CONFERRING WITH HIM IS THAT THERE WOULD BE

11:21AM 12 QUESTIONS ABOUT, YOU KNOW, WHETHER THAT MATTERED TO HER AND WHY

11:21AM 13 IT WAS IMPORTANT AND WOULD SHE HAVE WANTED TO KNOW THAT?

11:21AM 14 THE COURT: FOR INVESTMENT PURPOSES?

11:21AM 15 MR. COOPERSMITH: RIGHT.

11:21AM 16 THE COURT: WOULD IT HAVE MADE A DIFFERENCE IF SHE

11:21AM 17 HAD KNOWN THAT FOR INVESTMENT PURPOSES?

11:21AM 18 MR. COOPERSMITH: RIGHT, TO HER VIEW OF THE

11:21AM 19 INVESTMENT OR SOMETHING LIKE THAT.

11:21AM 20 THE COURT: I SEE.

11:21AM 21 MR. COOPERSMITH: MR. LEACH CAN OBVIOUSLY ARTICULATE

11:21AM 22 BETTER WHAT HE'S GOING AFTER BETTER THAN ME, BUT I THINK FROM

11:22AM 23 OUR STANDPOINT THIS SHOULD NOT BE A SUBJECT OF QUESTIONING.

11:22AM 24 THE COURT: ALL RIGHT.

11:22AM 25 MR. LEACH.

11:22AM 1 MR. LEACH: YOUR HONOR, THIS IS RELEVANT AND IT'S

11:22AM 2 INEXTRICABLY INTERTWINED WITH THE ALLEGATIONS OF THE

11:22AM 3 INDICTMENT.

11:22AM 4 THE FACT IS THAT MS. HOLMES AND MR. BALWANI CONCEALED

11:22AM 5 THEIR ROMANTIC RELATIONSHIP FROM INVESTORS. MS. PETERSON IS

11:22AM 6 NOT THE ONLY ONE WHO WILL SAY THIS. I ANTICIPATE VIRTUALLY ALL

11:22AM 7 OF THE OTHER INVESTORS WILL SAY THEY WERE UNAWARE OF A ROMANTIC

11:22AM 8 RELATIONSHIP BETWEEN THE CHIEF EXECUTIVE OFFICER AND THE CHIEF

11:22AM 9 OPERATING OFFICER OF THIS SMALL COMPANY WHO EXERCISED VIRTUALLY

11:22AM 10 TOTAL CONTROL OVER THE COMPANY.

11:22AM 11 MS. PETERSON WAS UNAWARE OF THAT.

11:22AM 12 WE'VE ASKED HER, WOULD THAT HAVE BEEN RELEVANT TO YOUR

11:22AM 13 INVESTMENT DECISION, TO THE DECISION TO PART WITH MONEY OR

11:22AM 14 PROPERTY?

11:22AM 15 I ANTICIPATE HER ANSWER WILL BE YES, AND THAT ANSWER MAKES

11:22AM 16 SENSE BECAUSE WHEN YOU'RE INVESTING IN A SMALL COMPANY, YOU

11:23AM 17 WOULD THINK THAT THE CEO WOULD HIRE NOT SIMPLY SOMEBODY WHO SHE

11:23AM 18 WAS ROMANTICALLY INVOLVED WITH, BUT SOMEBODY WHO WAS THE BEST

11:23AM 19 PERSON FOR THE JOB.

11:23AM 20 I ANTICIPATE THAT MS. PETERSON WILL SAY THE FACT THAT

11:23AM 21 THERE'S A ROMANTIC RELATIONSHIP BETWEEN THE CEO AND THE COO,

11:23AM 22 NOT JUST OF THIS COMPANY BUT OF ANY COMPANY, RAISES A NUMBER OF

11:23AM 23 QUESTIONS ABOUT CONFLICT OF INTEREST, WHETHER OR NOT THAT

11:23AM 24 PERSON IS THE APPROPRIATE PERSON FOR THE JOB.

11:23AM 25 AND I DON'T KNOW WHETHER THAT'S RIGHT OR THAT'S WRONG, BUT

11:23AM 1 I ANTICIPATE THAT'S HER TESTIMONY, AS WELL AS THE TESTIMONY OF
11:23AM 2 MANY OTHER INVESTORS.

11:23AM 3 AND I DON'T UNDERSTAND THE BASIS FOR -- YOU KNOW,
11:23AM 4 MR. COOPERSMITH MIGHT DISAGREE WITH THAT. MR. COOPERSMITH
11:23AM 5 MIGHT THINK THAT THIS IS PERSONAL.

11:23AM 6 BUT THEY HELD THEMSELVES OUT AS THE TWO MOST IMPORTANT
11:23AM 7 PEOPLE WITHIN THIS COMPANY, AND THEY HELD OUT THE FACT THAT
11:23AM 8 MR. BALWANI HAD A PARTICULAR EXPERTISE IN SOFTWARE THAT MADE
11:23AM 9 HIM THE BEST CANDIDATE TO RUN THIS NOVEL LAB TESTING COMPANY,
11:23AM 10 AND I THINK THE FACT THAT THEY HAD A RELATIONSHIP AND WERE
11:24AM 11 ROMANTICALLY INVOLVED WAS AN EQUAL, IF NOT GREATER, REASON FOR
11:24AM 12 WHY MR. BALWANI WAS THERE, AND IT'S CERTAINLY SOMETHING THAT
11:24AM 13 INVESTORS, IN HINDSIGHT, WANTED TO KNOW ABOUT AND THINK IS
11:24AM 14 RELEVANT TO THE INVESTMENT DECISION.

11:24AM 15 SO I DON'T SEE A BASIS UNDER 401 OR 403 FOR THIS TO BE
11:24AM 16 EXCLUDED.

11:24AM 17 I DON'T THINK IT'S 404(B), IT'S INEXTRICABLY INTERTWINED
11:24AM 18 WITH THE DEFENSE.

11:24AM 19 AT A MINIMUM, WE PROVIDED NOTICE, SO I DON'T THINK THERE'S
11:24AM 20 ANY ISSUE WITH THAT THERE.

11:24AM 21 AND YOU -- SHE'S NOT THE ONLY ONE WHO WILL SAY THIS.
11:24AM 22 INVESTORS WILL SAY, OF COURSE, IN A SMALL COMPANY WHERE WE'RE
11:24AM 23 INVESTING TENS, HUNDREDS OF MILLIONS OF DOLLARS, IF THERE IS A
11:24AM 24 RELATIONSHIP BETWEEN THE TWO MOST IMPORTANT PRINCIPALS OF THE
11:24AM 25 COMPANY THAT MIGHT AFFECT HOW THEY INTERACT, WHAT DECISIONS

11:24AM 1 THEY MAKE, HOW THEY'RE COMPENSATED, A WHOLE HOST OF POSSIBLE
11:24AM 2 CONFLICTS THAT ARISE, INVESTORS ARE GOING TO SAY THAT THEY
11:24AM 3 WANTED TO KNOW ABOUT THAT AND THEY THINK IT'S MATERIAL TO THE
11:24AM 4 INVESTMENT DECISION.

11:25AM 5 THOSE ARE THE FACTS, YOUR HONOR, AND THE JURY SHOULD HEAR
11:25AM 6 THAT.

11:25AM 7 THE OTHER ISSUE IS THAT THERE'S A GREAT DEAL OF --
11:25AM 8 CERTAINLY IN THE LAST TRIAL, AND TO SOME EXTENT IN THIS TRIAL,
11:25AM 9 THERE'S BEEN THEMES FROM THE DEFENSE OF MR. BALWANI RELIED ON
11:25AM 10 MS. HOLMES BECAUSE OF HER EXPERIENCE WITH THE TECHNOLOGY, OR,
11:25AM 11 YOU KNOW, I WAS JUST THE FINANCE GUY OR I WAS JUST RESPONSIBLE
11:25AM 12 FOR WALGREENS.

11:25AM 13 THERE'S A RELIANCE DEFENSE HERE, AND THE RELATIONSHIP IS
11:25AM 14 RELEVANT TO THAT RELIANCE DEFENSE AND THE INVESTORS'
11:25AM 15 UNDERSTANDING OF THAT IS RELEVANT TO AN ASSESSMENT OF WHY THEY
11:25AM 16 INVESTED.

11:25AM 17 SO WE THINK THIS IS COMPLETELY FAIR GAME. IT'S NOT
11:25AM 18 EXCLUDABLE. IT'S CERTAINLY RELEVANT AND IT'S NOT EXCLUDABLE
11:25AM 19 UNDER 403 OR 404.

11:25AM 20 I ADMIT, IT'S UNCOMFORTABLE ASKING QUESTIONS, DID YOU KNOW
11:25AM 21 ABOUT THE RELATIONSHIP?

11:25AM 22 AND PEOPLE ARE ENTITLED TO HAVE THEIR PRIVATE LIVES, BUT
11:25AM 23 WHEN IT'S THE TWO MOST IMPORTANT PEOPLE WITHIN THIS COMPANY,
11:26AM 24 THEY'RE HOLDING OUT SOME PARTICULAR EXPERTISE, IF THERE'S ANY
11:26AM 25 REASON, ROMANTIC OR OTHERWISE, WHY A PERSON MIGHT BE IN THAT

11:26AM 1 POSITION, EXERCISING CERTAIN RESPONSIBILITY, THAT'S SOMETHING
11:26AM 2 THAT INVESTORS WANT TO KNOW ABOUT.

11:26AM 3 THE COURT: THANK YOU.

11:26AM 4 SO IS THE QUESTION, WERE YOU AWARE, AND WOULD THAT HAVE
11:26AM 5 MATTERED?

11:26AM 6 MR. LEACH: YES.

11:26AM 7 THE COURT: ARE THOSE THE TWO QUESTIONS?

11:26AM 8 MR. LEACH: YES.

11:26AM 9 THE COURT: IN GENERAL?

11:26AM 10 MR. LEACH: YES, NO GREATER THAN THAT.

11:26AM 11 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:26AM 12 I THINK I'M, INDEED, VERY FAR APART FROM MR. LEACH ON THIS
11:26AM 13 POINT.

11:26AM 14 I WILL NOTE, FIRST OF ALL, IN RESPONDING TO MR. LEACH,
11:26AM 15 THAT THE GOVERNMENT I BELIEVE HAS SAID THIS IS NOT AN OMISSIONS
11:26AM 16 CASE.

11:26AM 17 IN FACT, THE COURT MAY REMEMBER IN THE PREVIOUS TRIAL THAT
11:26AM 18 THE GOVERNMENT HAD DROPPED ITS REQUEST FOR AN INSTRUCTION THAT
11:26AM 19 TOLD THE JURY THAT IN FINAL INSTRUCTIONS ABOUT OMISSIONS.

11:26AM 20 AND THAT'S EVEN JUST TALKING ABOUT OMISSIONS THAT RELATE
11:26AM 21 TO, YOU KNOW, WHAT THE COMPANY WAS DOING WITH THEIR TECHNOLOGY
11:26AM 22 OR THEIR WALGREENS PROGRAM AND SO FORTH.

11:26AM 23 THIS IS VERY FAR AFIELD FROM THAT. THIS IS OMISSIONS TO
11:27AM 24 TELL AN INVESTOR THAT MR. BALWANI AND MS. HOLMES ARE IN A
11:27AM 25 RELATIONSHIP, AND THEN IT SOUNDS LIKE SOME SPECULATIVE

11:27AM 1 TESTIMONY THAT THEY'RE TRYING TO ELICIT ABOUT, WELL, HOW COULD
11:27AM 2 THAT HAVE POSSIBLY, IF YOU LOOKED AT THIS IN THE RIGHT LIGHT,
11:27AM 3 HAVE MADE A DIFFERENCE? COULD THERE SOMEHOW HAVE BEEN SOME
11:27AM 4 CONFLICT OR SOME OTHER ISSUE, NONE OF WHICH -- IT SOUNDS
11:27AM 5 SPECULATIVE, YOUR HONOR.

11:27AM 6 AND THEN FINALLY, I THINK THE WHOLE FACTUAL PREMISE FOR
11:27AM 7 THIS, WHAT MR. LEACH JUST SAID, IS WRONG.

11:27AM 8 WE ALREADY HEARD TESTIMONY IN THIS CASE FROM THE
11:27AM 9 GOVERNMENT'S WITNESS, MS. YAM, THAT BASED ON THE BOARD MINUTES,
11:27AM 10 THE BOARD INTERVIEWED CANDIDATES, THEY CONSIDERED OTHER
11:27AM 11 CANDIDATES, AND THEY SELECTED MR. BALWANI FOR THE ROLE THAT HE
11:27AM 12 HAD AT THERANOS.

11:27AM 13 SO I DON'T EVEN THINK THE FACTUAL PREMISES IS RIGHT.

11:27AM 14 BUT IN ANY EVENT, YOUR HONOR, THE IMPORTANT POINT IS THAT
11:27AM 15 THIS IS A ROMANTIC RELATIONSHIP, THIS IS NOTHING ABOUT THE
11:27AM 16 COMPANY.

11:27AM 17 THE FACT THAT TWO EXECUTIVES HAVE AN AFFAIR, IT HAPPENS
11:28AM 18 EVERY DAY ALL THROUGH CORPORATE AMERICA, AND IF THE PEOPLE
11:28AM 19 DECIDE TO KEEP IT PROFESSIONAL AT THE OFFICE OR NOT WEAR THEIR
11:28AM 20 HEARTS ON THEIR SLEEVES WHEN THEY'RE TALKING TO INVESTORS, THAT
11:28AM 21 SHOULD HAVE NO RELEVANCE OR BEARING ON THE ISSUES THAT ARE
11:28AM 22 ACTUALLY CHARGED IN THIS CASE.

11:28AM 23 THE COURT: THANK YOU.

11:28AM 24 IS THERE GOING TO BE SOME FOUNDATIONAL TESTIMONY FROM THIS
11:28AM 25 WITNESS ABOUT -- AND PARDON ME, I'LL JUST PUT IT IN THE

11:28AM 1 COLLOQUIAL -- THE PITCH AND WHO MADE THE PITCH AND HOW THE
11:28AM 2 PITCH WAS MADE TO INVESTORS?

11:28AM 3 MR. LEACH: YES, YOUR HONOR.

11:28AM 4 THE COURT: AND DID THAT INCLUDE MS. HOLMES AND

11:28AM 5 MR. BALWANI, EACH OF THEM MAKING THE PITCH OR PART OF THE

11:28AM 6 PITCH?

11:28AM 7 MR. LEACH: IT WILL, YOUR HONOR. I ANTICIPATE THERE

11:28AM 8 WILL BE TESTIMONY ABOUT A MEETING IN PALO ALTO IN OCTOBER OF

11:28AM 9 2014, A ROUGHLY FOUR OR FIVE HOUR MEETING WHERE BOTH MS. HOLMES

11:28AM 10 AND MR. BALWANI PARTICIPATED IN AN INVESTMENT PITCH WITH

11:28AM 11 MS. PETERSON.

11:28AM 12 THERE ALSO WILL BE EVIDENCE THAT MR. BALWANI FOLLOWED UP

11:28AM 13 AFTER THAT MEETING TO, YOU KNOW, ACTUALLY SECURE THE INVESTMENT

11:29AM 14 AND THE WIRE.

11:29AM 15 SO THERE WILL BE EVIDENCE OF A PITCH IN THE MIDDLE OF

11:29AM 16 OCTOBER WHERE BOTH MS. HOLMES AND MR. BALWANI WERE PRESENT.

11:29AM 17 THE COURT: OKAY. THANK YOU.

11:29AM 18 YOU HAD ANOTHER POINT? NOT ON THIS, BUT ON ANOTHER ONE

11:29AM 19 YOU WANTED TO RAISE?

11:29AM 20 MR. COOPERSMITH: THERE WERE OTHERS, BUT DOES THE

11:29AM 21 COURT HAVE ENOUGH INFORMATION ABOUT --

11:29AM 22 THE COURT: YES, I THINK SO.

11:29AM 23 MR. COOPERSMITH: OKAY. THANK YOU, YOUR HONOR.

11:29AM 24 THE NEXT ISSUE HAS TO DO WITH AN EXHIBIT THAT THE

11:29AM 25 GOVERNMENT I UNDERSTAND PLANS TO OFFER, WHICH IS 1944,

11:29AM 1 EXHIBIT 1944.

11:29AM 2 EXHIBIT 1944 IS AN EMAIL FROM A PERSON NAMED

11:29AM 3 JERRY TUBERGEN, WHO I BELIEVE IS SOMEONE THAT MS. PETERSON

11:29AM 4 WORKED WITH, AND HE WAS AT A HIGHER LEVEL THAN MS. PETERSON,

11:29AM 5 BUT SOMEONE SHE WORKED WITH.

11:29AM 6 AND THEN THE EMAIL IS NOT TO MS. PETERSON, BUT IT'S TO ONE

11:29AM 7 OF THE DEVOS FAMILY MEMBERS, A DICK DEVOS AND SOME OTHER FAMILY

11:30AM 8 MEMBERS AS WELL, AND IT ATTACHES AN ARTICLE THAT JERRY TUBERGEN

11:30AM 9 WAS POINTING OUT.

11:30AM 10 AND THE ARTICLE IS THE ROGER PARLOFF ARTICLE THAT THE

11:30AM 11 COURT IS FAMILIAR WITH. IT HAS MS. HOLMES PICTURED ON IT, AND

11:30AM 12 THEN IT HAS VARIOUS QUOTATIONS FROM MS. HOLMES AND OTHERS ALL

11:30AM 13 THROUGHOUT THE ARTICLE ABOUT THERANOS AND ITS HISTORY AND WHAT

11:30AM 14 SUPPOSEDLY IT COULD DO.

11:30AM 15 SO THAT'S THE PARLOFF ARTICLE.

11:30AM 16 WE KNOW FROM OTHER EXHIBITS, YOUR HONOR, THAT THIS IS

11:30AM 17 SOMETHING THAT MR. TUBERGEN, ONE OF THE RDV PEOPLE, RECEIVED

11:30AM 18 FROM A DIFFERENT INVESTOR WITNESS, WHO WE WILL EVENTUALLY SEE

11:30AM 19 AT TRIAL, NAMED DAN MOSLEY, WHO'S A LAWYER AT

11:30AM 20 CRAVATH, SWAINE & MOORE.

11:30AM 21 MR. MOSLEY FORWARDS MR. TUBERGEN THE ARTICLE, MR. TUBERGEN

11:30AM 22 THEN FORWARDS IT TO SOME DEVOS FAMILY MEMBERS, AND THAT

11:30AM 23 FORWARDING IS EXHIBIT 1944.

11:30AM 24 SO IT DIDN'T COME FROM MR. BALWANI. IT CAME FROM THIS

11:31AM 25 OTHER SOURCE.

11:31AM 1 THE COURT, DURING MR. EDLIN'S TESTIMONY, SUSTAINED AN
11:31AM 2 OBJECTION TO THE GOVERNMENT'S ATTEMPT TO INTRODUCE THE PARLOFF
11:31AM 3 ARTICLE AT THAT TIME.
11:31AM 4 THE GOVERNMENT NOW WANTS TO INTRODUCE IT THROUGH
11:31AM 5 MS. PETERSON.
11:31AM 6 I BELIEVE MS. PETERSON WOULD SAY, IF THE GOVERNMENT WAS
11:31AM 7 ALLOWED TO ASK HER, THAT SHE READ THE ARTICLE AND THAT SHE TOOK
11:31AM 8 SOME INFORMATION FROM IT.
11:31AM 9 BUT THE ARTICLE CONTAINS NOT ONLY DOUBLE, BUT I THINK
11:31AM 10 TRIPLE HEARSAY. IT'S NOT FROM MR. BALWANI.
11:31AM 11 MR. PARLOFF HAS NOT TESTIFIED, AND MAY OR MAY NOT, WE
11:31AM 12 DON'T KNOW THAT YET.
11:31AM 13 AND IT'S A DOCUMENT THAT SHOULD BE EXCLUDED BECAUSE OF THE
11:31AM 14 HEARSAY PROBLEM AND THE SAME OBJECTION THAT THE COURT ALREADY
11:31AM 15 SUSTAINED IN THE CASE OF MR. EDLIN.
11:31AM 16 THE COURT: OKAY.
11:31AM 17 MR. LEACH: YOUR HONOR, MS. PETERSON WAS PROVIDED
11:31AM 18 WITH A BINDER OF DUE DILIGENCE MATERIALS UNDER A
11:31AM 19 CONFIDENTIALITY AGREEMENT SIGNED BY MR. BALWANI.
11:31AM 20 THE DUE DILIGENCE PACKAGE INCLUDES A REFERENCE TO A NUMBER
11:32AM 21 OF NEWS ARTICLES, INCLUDING THE PARLOFF ARTICLE.
11:32AM 22 AND I ANTICIPATE MS. PETERSON WILL SAY SHE UNDERSTOOD
11:32AM 23 THERANOS TO BE SAYING, GO TO THESE ARTICLES, READ THEM, THIS IS
11:32AM 24 WHAT YOU SHOULD RELY ON IN MAKING AN INVESTMENT DECISION.
11:32AM 25 WE ARE NOT OFFERING -- SO IT WAS ABSOLUTELY HELD OUT BY

11:32AM 1 THERANOS ESSENTIALLY AS A PROSPECTUS, SOMETHING THAT THE
11:32AM 2 INVESTORS SHOULD READ AND DIGEST AND RELY ON AND COUNT ON.
11:32AM 3 AND IT'S BEING PROVIDED UNDER A CONFIDENTIALITY AGREEMENT
11:32AM 4 EXECUTED BY THE DEFENDANT.
11:32AM 5 WE ARE NOT OFFERING THE PARLOFF ARTICLE FOR THE TRUTH OF
11:32AM 6 THE STATEMENTS IN THERE. THESE ARE, ON A VERY REAL LEVEL, THE
11:32AM 7 REPRESENTATIONS THAT WERE MADE TO RDV AS PART OF ITS INVESTMENT
11:32AM 8 PROCESS.
11:32AM 9 AND MS. PETERSON IS GOING TO SAY, I'VE READ THIS, I'VE
11:32AM 10 RELIED ON THIS, THIS IS PART OF THE BASIS FOR MY INVESTMENT
11:32AM 11 DECISION.
11:32AM 12 THE TRUTH OR FALSITY OF THE STATEMENTS IN THE PARLOFF
11:33AM 13 ARTICLE ARE IRRELEVANT. THEY ARE OFFERED SIMPLY BECAUSE THESE
11:33AM 14 ARE THE STATEMENTS THAT WERE MADE TO THE WORLD AND QUITE
11:33AM 15 FOCUSED TO RDV THROUGH THE INVESTMENT MATERIALS TO
11:33AM 16 MS. PETERSON.
11:33AM 17 WE ARE OFFERING THIS BECAUSE WE THINK MANY OF THE
11:33AM 18 STATEMENTS IN THE PARLOFF ARTICLE ARE FALSE, AND I THINK WE
11:33AM 19 HAVE PROVEN THE FALSITY OF MANY OF THE REPRESENTATIONS IN THIS
11:33AM 20 ARTICLE.
11:33AM 21 SO I THINK THE WHOLE THING SHOULD COME IN, BUT AT A
11:33AM 22 MINIMUM, YOU KNOW, I'M PREPARED TO GO THROUGH MODEST PORTIONS
11:33AM 23 OF THE ARTICLE TO HIGHLIGHT PARTICULAR PHRASES THAT WE THINK
11:33AM 24 ARE FALSE THAT MS. PETERSON FOUND MATERIAL THAT WERE HELD OUT
11:33AM 25 TO HER BY THERANOS AND THESE DEFENDANTS AS INFORMATION THAT

11:33AM 1 THEY SHOULD RELY ON.

11:33AM 2 SO THERE IS NO HEARSAY PROBLEM HERE. THAT'S THE ONLY

11:33AM 3 OBJECTION THAT I'M HEARING FROM THEM.

11:33AM 4 FRANKLY, WE'RE OFFERING IT FOR THE FALSITY, NOT FOR THE

11:34AM 5 TRUTH. SO I DON'T THINK THE HEARSAY OBJECTION IS WELL TAKEN.

11:34AM 6 IF IT'S THE ENTIRETY, AND I'M ACTUALLY NOT QUITE SURE WHAT

11:34AM 7 PROVISION OF THIS IS CAUSING MR. COOPERSMITH ANGST, BUT IF

11:34AM 8 THERE IS SOMETHING IN THERE, YOU KNOW, THERE'S A SMALL

11:34AM 9 PERCENTAGE OF STATEMENTS I WANTED TO HIGHLIGHT WITH HER, AND WE

11:34AM 10 WOULD BE PREPARED TO DO THAT, TOO, IF NECESSARY.

11:34AM 11 MR. COOPERSMITH: ALL OF IT, YOUR HONOR.

11:34AM 12 BUT HERE'S THE PROBLEM WITH WHAT MR. LEACH JUST SAID.

11:34AM 13 SO, FIRST OF ALL, WE DON'T EVEN KNOW AT THIS POINT IN THIS

11:34AM 14 TRIAL WHETHER MR. PARLOFF EVEN GOT IT RIGHT. I DON'T KNOW

11:34AM 15 WHETHER THE STATEMENTS HE'S QUOTING FROM MS. HOLMES AND OTHERS

11:34AM 16 IN THE ARTICLE ARE CORRECT, AND WE DON'T KNOW THAT.

11:34AM 17 SO THERE'S THAT LAYER OF HEARSAY REGARDLESS OF WHAT THE

11:34AM 18 GOVERNMENT IS OFFERING THE OTHER STATEMENTS IN THERE. SO

11:34AM 19 MR. LEACH HAS NOT SOLVED FOR THAT LAYER OF HEARSAY IN ANY WAY.

11:34AM 20 AND I WILL ALSO JUST SAY, YOUR HONOR, THAT IN THIS TRIAL,

11:34AM 21 THEY HAVE NOT EVEN LINKED THIS TO MR. BALWANI.

11:34AM 22 AS I SAID IN THE FIRST PLACE, THIS ARTICLE GETS TO RDV, TO

11:35AM 23 MR. TUBERGEN, WHO IS ULTIMATELY MS. PETERSON'S BOSS, IT GETS TO

11:35AM 24 RDV BECAUSE OF SOMEONE ELSE WHO SENDS IT AND NOT MR. BALWANI,

11:35AM 25 RIGHT?

11:35AM 1 THE COURT: OKAY. BUT IS IT AN ISSUE -- PARDON ME
11:35AM 2 FOR INTERRUPTING YOU.

11:35AM 3 WHAT I HEARD MR. LEACH SAY IS THAT WHATEVER THE SOURCE OF
11:35AM 4 THE ARTICLE, IT WAS FORWARDED TO MS. PETERSON AS PART OF THE
11:35AM 5 INVESTMENT PITCH BY YOUR CLIENT.

11:35AM 6 DOES THAT CHANGE THINGS?

11:35AM 7 MR. COOPERSMITH: WELL, FIRST OF ALL, THAT'S NOT
11:35AM 8 ACCURATE.

11:35AM 9 THE COURT: OH.

11:35AM 10 MR. COOPERSMITH: AND WE HEARD TESTIMONY FROM
11:35AM 11 MR. EDLIN ABOUT INVESTOR PITCHES, AND WHAT MR. EDLIN TESTIFIED
11:35AM 12 IS THAT THE ONLY THING THAT HE EVER GOT FROM MR. BALWANI WAS
11:35AM 13 THE FINANCIAL PIECE OF THIS PITCH, IF YOU WILL.

11:35AM 14 I'M SURE THAT MR. LEACH IS GOING TO GO INTO THAT FINANCIAL
11:35AM 15 PIECE AT LENGTH, AND WE'RE NOT OBJECTING TO THAT.

11:35AM 16 BUT THIS BINDER DOES NOT CONTAIN THE ARTICLE. IT'S NOT IN
11:35AM 17 THE BINDER.

11:35AM 18 AND THIS IS -- I THINK WHAT MR. LEACH IS REFERRING TO IS
11:36AM 19 EXHIBIT 4858, WHICH IS A VERY LENGTHY DOCUMENT WITH A LOT OF
11:36AM 20 SLIDES AND OTHER MATERIALS.

11:36AM 21 AND ONE OF THE PAGES OF THAT DOCUMENT, I BELIEVE IT'S
11:36AM 22 PAGE 104 OF EXHIBIT 4858, HAS A LIST OF ARTICLES, AND I THINK
11:36AM 23 THE TITLE OF IT IS PRESS ABOUT THERANOS.

11:36AM 24 THE COURT: OKAY.

11:36AM 25 MR. COOPERSMITH: AND ONE OF THEM IS THE ARTICLE,

11:36AM 1 BUT THE ARTICLE ITSELF IS NOT THERE.

11:36AM 2 THERE'S NO EVIDENCE IN THIS TRIAL THAT MR. BALWANI

11:36AM 3 ASSEMBLED THAT PITCH OR SENT IT TO RDV. IT'S JUST NOT LINKED

11:36AM 4 TO MR. BALWANI.

11:36AM 5 IN ADDITION TO THE FACT THAT THE ARTICLE, EVEN BEFORE THIS

11:36AM 6 SLIDE DECK WAS SENT AT RDV, THEY ALREADY HAD IT FROM A TOTALLY

11:36AM 7 DIFFERENT SOURCE.

11:36AM 8 SO IT'S JUST A NEWS MEDIA ARTICLE. IT CONTAINS MULTIPLE

11:36AM 9 LAYERS OF HEARSAY THAT MR. LEACH HAS NOT SOLVED FOR AND IT

11:36AM 10 SHOULD NOT BE ADMITTED.

11:36AM 11 THE COURT: WELL, LET ME EXPLORE THE ISSUE ABOUT THE

11:36AM 12 SOURCE OF IT.

11:36AM 13 MR. BALWANI DID NOT SEND THIS AS PART OF A PITCH?

11:36AM 14 MR. LEACH: MR. BALWANI SIGNS A CONFIDENTIALITY

11:36AM 15 AGREEMENT FOR DUE DILIGENCE MATERIALS THAT GO TO RDV.

11:37AM 16 THOSE DUE DILIGENCE MATERIALS INCLUDE A POWERPOINT THAT,

11:37AM 17 AS MR. COOPERSMITH DESCRIBED, SAY RECENT PRESS, AND ONE OF THE

11:37AM 18 RECENT PRESS IS THE ARTICLE.

11:37AM 19 AND MS. PETERSON IS GOING TO SAY, WHEN I READ THESE DUE

11:37AM 20 DILIGENCE MATERIALS THAT WERE PROVIDED TO HER AS PART OF A

11:37AM 21 PROCESS THAT MR. BALWANI IS INVOLVED IN, I READ THAT AS

11:37AM 22 THERANOS SAYING GO TO THESE ARTICLES, READ THEM, RELY ON THEM.

11:37AM 23 THE COURT: RIGHT. AND SO -- I'M SORRY TO INTERRUPT

11:37AM 24 YOU, BUT IT'S IMPORTANT FOR ME TO KNOW MR. BALWANI'S ROLE IN

11:37AM 25 THE -- IN HER RECEIPT OF THOSE MATERIALS IN SUPPORT OF THE

11:37AM 1 INVESTMENT AND WHAT WAS HIS ROLE.

11:37AM 2 MR. LEACH: HE SIGNS THE CONFIDENTIALITY AGREEMENT

11:37AM 3 UNDER WHICH THE MATERIALS ARE PROVIDED.

11:37AM 4 MS. HOLMES FOLLOWS UP WITH AN EMAIL THAT IS -- SO HE

11:37AM 5 CERTAINLY KNOWS THAT SOME MATERIALS ARE GOING OUT TO HER.

11:37AM 6 MS. HOLMES WRITES IN AN EMAIL, "OUR TEAM WILL GET YOU THE

11:38AM 7 MATERIALS."

11:38AM 8 HE'S THEN PART OF A MEETING IN OCTOBER OF 2014 WHERE, YOU

11:38AM 9 KNOW, I DON'T THINK THE ARTICLE WAS PASSED AROUND, BUT THEY

11:38AM 10 TALKED ABOUT INFORMATION THAT IS IN THE DUE DILIGENCE

11:38AM 11 MATERIALS.

11:38AM 12 MS. PETERSON WILL SAY, I BROUGHT THE DUE DILIGENCE

11:38AM 13 MATERIALS WITH ME AND WE WENT THROUGH THEM, INCLUDING A

11:38AM 14 FINANCIAL STATEMENT THAT MR. BALWANI TALKED TO SPECIFICALLY.

11:38AM 15 SO THESE WERE SENT IN ADVANCE OF A MEETING THAT

11:38AM 16 MR. BALWANI PARTICIPATED IN.

11:38AM 17 I DO WANT TO GO TO THIS CONCEPT THAT THE GOVERNMENT --

11:38AM 18 BEFORE INTRODUCING ANY EVIDENCE, THE GOVERNMENT IS REQUIRED TO

11:38AM 19 PROVE THAT MR. BALWANI REVIEWED AND APPROVED EVERY SINGLE PAGE

11:38AM 20 OF THE POWERPOINT.

11:38AM 21 I THINK THAT'S AN ISSUE THAT GOES TO WEIGHT, YOUR HONOR,

11:38AM 22 AND NOT THE ADMISSIBILITY OF THE DOCUMENT.

11:38AM 23 MS. HOLMES IS SENDING A NUMBER OF THESE POWERPOINTS IN

11:38AM 24 CERTAIN INSTANCES.

11:38AM 25 THE COURT WILL HEAR FROM AN INVESTOR LATER,

11:38AM 1 BRIAN GROSSMAN, WHO WILL SAY, I RECEIVED A DUE DILIGENCE

11:39AM 2 POWERPOINT DIRECTLY FROM MR. BALWANI.

11:39AM 3 THE TEXT MESSAGES THAT ARE IN EVIDENCE AT 5387H INCLUDE A

11:39AM 4 TEXT AT PAGE 17 WHERE MS. HOLMES AND MR. BALWANI ARE TALKING

11:39AM 5 ABOUT WHAT DOCUMENTS SHOULD BE INCLUDED AND NOT INCLUDED IN

11:39AM 6 INVESTOR MATERIALS.

11:39AM 7 MS. HOLMES WRITES, "AM PLANNING ON INCLUDING ALL WE SENT

11:39AM 8 DST," WHICH I THINK IS ANOTHER PROSPECTIVE INVESTOR, "INCLUDING

11:39AM 9 THE PFIZER REPORTS, LET ME KNOW IF YOU DISAGREE, ALSO THE

11:39AM 10 HOSPITAL LIST."

11:39AM 11 SO THERE IS EVIDENCE, OUTSIDE OF MR. EDLIN, THAT

11:39AM 12 MS. HOLMES AND MR. BALWANI WERE COLLABORATING ON WHAT SHOULD OR

11:39AM 13 SHOULDN'T GO TO INVESTORS.

11:39AM 14 MR. COOPERSMITH HAS POINTS ON CROSS-EXAMINATION THAT HE'S

11:39AM 15 NOT THE ONE WHO PHYSICALLY SENT THE PARLOFF ARTICLE TO HER. I

11:39AM 16 DON'T THINK WE HAVE EVIDENCE OF WHO STAMPED THE MAILING FOR THE

11:40AM 17 DUE DILIGENCE PACKAGES TO MS. PETERSON.

11:40AM 18 BUT HE'S ABSOLUTELY INVOLVED IN THIS PROCESS. HE'S

11:40AM 19 COLLABORATING WITH MS. HOLMES IN OTHER INSTANCES ABOUT WHAT

11:40AM 20 SHOULD OR SHOULDN'T BE IN THERE. THEY'RE WORKING TOGETHER IN

11:40AM 21 INVESTOR MEETINGS.

11:40AM 22 I THINK THESE SUPPORT AN INFERENCE THAT MR. BALWANI HAS

11:40AM 23 FAMILIARITY WITH WHAT IS IN THERE.

11:40AM 24 AND AGAIN, THEY'RE HOLDING -- MS. HOLMES, THERE'S ACTUALLY

11:40AM 25 NO QUESTION ABOUT THAT, IS HOLDING OUT THE PARLOFF ARTICLE AS

11:40AM 1 SOMETHING THAT COULD BE RELIED ON.

11:40AM 2 MR. BALWANI IS SITTING THERE IN THE MEETING PARTICIPATING

11:40AM 3 WHERE TOPICS WITHIN THAT ARTICLE, MAYBE NOT THE ARTICLE ITSELF,

11:40AM 4 COME UP.

11:40AM 5 ALL OF THESE ARE WEIGHT ARGUMENTS. THEY'RE NOT EVEN

11:40AM 6 HEARSAY ARGUMENTS.

11:40AM 7 AND THIS IS A FRAUD CASE, YOUR HONOR. WHAT THE

11:40AM 8 DEFENDANT -- OR WHAT THE VICTIMS RELIED ON OR REVIEWED IS

11:40AM 9 RELEVANT TO MATERIALITY. SHE'S GOING TO SAY SHE READ IT AND

11:40AM 10 PLACED WEIGHT ON IT.

11:40AM 11 IT'S A -- YOU KNOW, IT'S NOT JUST -- IT'S NOT JUST

11:40AM 12 IMPORTANT FOR WHO MADE THE STATEMENT, BUT FOR WHAT INFORMATION

11:41AM 13 WAS RELEVANT TO HER OR NOT RELEVANT TO HER IN MAKING HER

11:41AM 14 INVESTMENT DECISION.

11:41AM 15 THE COURT: OKAY.

11:41AM 16 MR. COOPERSMITH: YOUR HONOR, THE COURT ASKED A

11:41AM 17 DIRECT QUESTION OF MR. LEACH, WHICH WAS, WHAT EXACTLY WAS

11:41AM 18 MR. BALWANI'S ROLE IN SENDING THE POWERPOINT?

11:41AM 19 AND WHAT I HEARD FROM MR. LEACH WAS A LOT OF KIND OF

11:41AM 20 SKATING AROUND THE MARGINS OF THAT, BUT NOT AN ANSWER THAT

11:41AM 21 MR. BALWANI WAS INVOLVED IN SENDING THIS POWERPOINT.

11:41AM 22 THE TESTIMONY FROM MR. EDLIN WAS THAT HE WAS INVOLVED.

11:41AM 23 MR. EDLIN HAD ASKED FOR FINANCIAL INFORMATION FROM MR. BALWANI,

11:41AM 24 AND THAT WAS IT.

11:41AM 25 AND THE FACT THAT TOPICS THAT ALSO WERE ADDRESSED IN THE

11:41AM 1 PARLOFF ARTICLE WERE ALSO DISCUSSED AT THE MEETING THAT THE
11:41AM 2 DEVOS FAMILY AND MS. PETERSON ATTENDED IN MID-OCTOBER OF '14,
11:41AM 3 IF THE GOVERNMENT WANTS TO ASK MS. PETERSON WHAT SHE REMEMBERS
11:41AM 4 ABOUT THAT MEETING WHILE MR. BALWANI WAS PRESENT, I'M THINK
11:41AM 5 THAT'S FAIR GAME AND I'M SURE THEY WILL DO THAT.

11:41AM 6 BUT THE FACT THAT THERE WERE ALSO TOPICS THAT ALSO APPEAR
11:41AM 7 IN THE PARLOFF ARTICLE, WELL, BOTH WERE ABOUT THERANOS, SO IT'S
11:42AM 8 NOT SURPRISING THAT THERE WAS OVERLAP THERE. BUT THAT DOES NOT
11:42AM 9 IN ANY WAY MAKE THE PARLOFF ARTICLE ADMISSIBLE.

11:42AM 10 SO THEY HAVE NOT -- IT IS REALLY IMPORTANT, AS THE COURT
11:42AM 11 ASKED, WHAT MR. BALWANI'S ROLE IS. I HAVE NOT HEARD FROM
11:42AM 12 MR. LEACH AN EXPLANATION THAT WOULD MAKE THIS TRIPLE HEARSAY
11:42AM 13 DOCUMENT ADMISSIBLE.

11:42AM 14 THE COURT: WELL, WHAT ABOUT MR. LEACH'S POINT THAT
11:42AM 15 THIS IS NOT, IT'S NOT HEARSAY, IT'S NOT OFFERED FOR THE TRUTH
11:42AM 16 OF THE MATTER ASSERTED?

11:42AM 17 MR. COOPERSMITH: RIGHT.

11:42AM 18 SO, YOUR HONOR, WHERE THAT FAILS IS THERE'S A JOURNALIST
11:42AM 19 NAMED ROGER PARLOFF, RIGHT, WHO HAS NOT TESTIFIED IN THIS
11:42AM 20 TRIAL -- AND MAYBE HE WILL, MAYBE HE WON'T -- AND MR. PARLOFF
11:42AM 21 IS PUTTING DOWN IN AN ARTICLE WHAT HE CLAIMS PEOPLE SAID.

11:42AM 22 AS TO WHETHER HE'S CORRECT OR NOT CORRECT OR MAKING IT UP,
11:42AM 23 WE JUST DON'T KNOW BECAUSE WE HAVE NOT HEARD FROM HIM IN THIS
11:42AM 24 TRIAL.

11:42AM 25 SO THAT'S THE HEARSAY LAYER THAT MR. LEACH'S ARGUMENT

11:42AM 1 CANNOT SURMOUNT, AND IT'S HEARSAY BASED ON THAT.

11:42AM 2 AS TO WHAT IS THE CONTENT OF IT AS TO MS. HOLMES IS QUOTED

11:43AM 3 AS SAYING SOMETHING, IT MAY WELL BE TRUE THAT THEY'RE TRYING TO

11:43AM 4 OFFER THAT FOR THE FALSITY AS OPPOSED TO THE TRUTH.

11:43AM 5 BUT THEY CAN'T GET BY THAT LAYER OF HEARSAY WHERE IT'S

11:43AM 6 MR. PARLOFF WHO IS REPORTING ON WHAT, IN THIS CASE, MS. HOLMES

11:43AM 7 SAID AND OTHER PEOPLE SAID.

11:43AM 8 SO THAT'S THE LAYER OF HEARSAY THAT IS THE PROBLEM.

11:43AM 9 THE COURT: OKAY.

11:43AM 10 MR. LEACH.

11:43AM 11 MR. LEACH: YOUR HONOR, IF I TAKE THIS PIECE OF

11:43AM 12 PAPER RIGHT HERE, SOMETHING -- I HAPPENED TO WRITE ON THIS

11:43AM 13 ONE -- BUT THAT I DIDN'T WRITE AND THAT INCLUDES LOTS OF QUOTES

11:43AM 14 FROM SOMEONE ELSE AND I HAND THIS TO YOU AND I SAY, YOU SHOULD

11:43AM 15 RELY ON THIS FOR YOUR INVESTMENT DECISION, THERE'S NO HEARSAY

11:43AM 16 PROBLEM. IT'S, IT'S -- THERE'S NO HEARSAY PROBLEM. IT'S WHAT

11:43AM 17 SHE IS RELYING ON.

11:43AM 18 IT DOESN'T MATTER IF IT SAYS, PARLOFF SAYS HOLMES SAID X.

11:43AM 19 IT'S THE DEFENDANTS HOLDING THIS OUT IS THE THING THAT

11:43AM 20 SHOULD BE RELIED ON IT, WHOEVER SAID WHAT IN IT.

11:43AM 21 WE'RE NOT OFFERING IT FOR ITS TRUTH. WE'RE NOT OFFERING

11:43AM 22 IT FOR HOLMES SAID THESE THINGS TO PARLOFF.

11:43AM 23 WE'RE OFFERING IT BECAUSE THERANOS, THROUGH MS. HOLMES AND

11:44AM 24 MR. BALWANI, HELD IT OUT THERE.

11:44AM 25 WHAT I HEAR OF THE CORE OF THE DEFENSE ARGUMENT IS THAT

11:44AM 1 BALWANI DIDN'T WRITE THIS, BALWANI MAY NOT HAVE EVEN KNOWN
11:44AM 2 ABOUT IT.

11:44AM 3 ALL OF THOSE ARE WEIGHT ARGUMENTS. HE WANTS TO
11:44AM 4 DISASSOCIATE HIMSELF FROM THE FALSE STATEMENTS IN THE ARTICLE.

11:44AM 5 HE CAN DO THAT THROUGH CROSS-EXAMINATION.

11:44AM 6 I DIDN'T SIT FOR IT.

11:44AM 7 WE THINK HE DID.

11:44AM 8 I DIDN'T KNOW THE ARTICLE -- DID MR. BALWANI HAND YOU THE
11:44AM 9 ARTICLE?

11:44AM 10 NO.

11:44AM 11 HE CAN DISASSOCIATE HIMSELF FROM THE STATEMENTS IN THERE
11:44AM 12 ALL HE WANTS THROUGH CROSS-EXAMINATION, AND THAT MAY OR MAY NOT
11:44AM 13 BE EFFECTIVE, BUT IT'S NOT HEARSAY.

11:44AM 14 AND HE'S LINKED TO THESE INVESTMENT PITCHES, NOT JUST IN
11:44AM 15 THIS PARTICULAR ONE, BUT VIRTUALLY EVERYONE THAT THE COURT IS
11:44AM 16 GOING TO HEAR FROM.

11:44AM 17 HE PERSONALLY SENDS OUT A DUE DILIGENCE PACKAGE TO
11:44AM 18 BRIAN GROSSMAN.

11:44AM 19 THE TEXT MESSAGES ARE CLEAR AS DAY THAT THEY'RE
11:44AM 20 COLLABORATING ABOUT WHAT SHOULD GO IN THERE.

11:44AM 21 EVERYTHING THAT MR. COOPERSMITH IS RAISING IS A WEIGHT
11:44AM 22 ARGUMENT, NOT A VALID HEARSAY ARGUMENT.

11:45AM 23 THE COURT: OKAY. THANK YOU.

11:45AM 24 MR. COOPERSMITH: YOUR HONOR, JUST TO BRIEFLY
11:45AM 25 RESPOND TO THAT.

11:45AM 1 WHAT I HEARD MR. LEACH SAYING AS THE ANSWER TO THE HEARSAY

11:45AM 2 PROBLEM OF MR. PARLOFF REPORTING ON THINGS IS THAT MR. BALWANI,

11:45AM 3 ACCORDING TO MR. LEACH, IS THE ONE WHO REPRESENTS, HEY, READ

11:45AM 4 THIS ARTICLE, THIS IS ABOUT THERANOS, THIS IS GREAT.

11:45AM 5 THE PROBLEM IS THAT THERE IS NO EVIDENCE THAT THAT'S WHAT

11:45AM 6 HAPPENED. THAT'S NOT CORRECT.

11:45AM 7 MR. EDLIN SAID THE ONLY THING HE GOT FROM MR. BALWANI WAS

11:45AM 8 FINANCIAL INFORMATION.

11:45AM 9 AS I'VE SAID, THE RDV PEOPLE GET THIS ARTICLE FROM A

11:45AM 10 DIFFERENT SOURCE, NOT FROM MR. BALWANI.

11:45AM 11 THERE'S NO EVIDENCE THAT MR. BALWANI REPRESENTED THAT THIS

11:45AM 12 IS SOMETHING THAT THEY SHOULD READ.

11:45AM 13 MR. LEACH DOES NOT, APPARENTLY, HAVE EVIDENCE THAT THIS

11:45AM 14 ARTICLE WAS DISCUSSED AT THE MEETING HE'S REFERRING TO IN

11:45AM 15 OCTOBER. IN FACT, HE ADMITTED THAT.

11:45AM 16 SO THESE ARE JUST NOT THE FACTS.

11:45AM 17 AS FOR MR. GROSSMAN, I THINK WHEN MR. GROSSMAN COMES ON

11:45AM 18 THE STAND, WE'LL DEAL WITH WHATEVER ISSUES WE HAVE WITH HIM,

11:45AM 19 BUT THAT'S NOT RELEVANT TO THIS MATTER.

11:45AM 20 THE COURT: WHAT ABOUT THE FACT THAT MR. LEACH IS

11:46AM 21 TALKING ABOUT NDA'S THAT YOUR CLIENT SIGNED IN RELATION TO

11:46AM 22 THESE DOCUMENTS?

11:46AM 23 MR. COOPERSMITH: RIGHT. THAT WAS ONE OF WHAT I

11:46AM 24 DESCRIBED AS SKATING AROUND THE MARGINS OF THINGS.

11:46AM 25 SURE, MR. BALWANI'S ADMINISTRATIVE TASK OF MAKING SURE A

11:46AM 1 NONDISCLOSURE AGREEMENT WAS SIGNED BEFORE CONFIDENTIAL

11:46AM 2 MATERIALS WERE SENT TO THIS PROSPECTIVE INVESTOR, BUT THAT IN

11:46AM 3 NO WAY INFORMS AS TO WHAT WAS SENT, AND IT CERTAINLY IN NO WAY

11:46AM 4 INFORMS THAT MR. BALWANI SAID, WELL, SEND THE PARLOFF ARTICLE

11:46AM 5 TO HIM.

11:46AM 6 THIS WAS A JUST GENERAL NDA THAT WOULD COVER ANYTHING. IN

11:46AM 7 FACT, IT'S THE KIND OF THING THAT WOULD COVER EVERYTHING BUT

11:46AM 8 SOMETHING LIKE THE PARLOFF ARTICLE.

11:46AM 9 NDA'S ARE FOR CONFIDENTIAL, YOU KNOW, TRADE SECRET,

11:46AM 10 PROPRIETARY TYPE OF INFORMATION DISCLOSURE ISSUES, NOT A PUBLIC

11:46AM 11 ARTICLE THAT IS IN "FORTUNE" ARTICLE.

11:46AM 12 THE COURT: WELL, IS THAT A PITCH, THOUGH? IS THAT

11:46AM 13 THE COMPANY'S PITCH? IS THAT WHAT THE NDA WAS INVOLVING?

11:46AM 14 MR. COOPERSMITH: THE NDA IS JUST FACILITATING THE

11:46AM 15 ABILITY TO SEND PROPRIETARY INFORMATION TO A POTENTIAL

11:46AM 16 INVESTOR. THAT'S IT.

11:47AM 17 THE COURT: IS THAT THE PITCH, WHAT WAS BEING SENT,

11:47AM 18 MR. LEACH?

11:47AM 19 MR. COOPERSMITH: YES, YOUR HONOR. IT WAS, IT WAS

11:47AM 20 FACILITATING THE SENDING OF PROPRIETARY INFORMATION, WHICH YOU

11:47AM 21 COULD DESCRIBE AS THE PITCH MATERIALS OR THE --

11:47AM 22 THE COURT: RIGHT.

11:47AM 23 MR. COOPERSMITH: -- BUT THAT'S NOT --

11:47AM 24 THE COURT: DOES THAT MAKE A DIFFERENCE?

11:47AM 25 MR. LEACH: IT ABSOLUTELY DOES NOT, YOUR HONOR.

11:47AM 1 THE DEFENSE WANT TO SAY THAT THE DEFENDANT SIGNED THE
11:47AM 2 CONFIDENTIALITY AGREEMENT UNDER WHICH THE DUE DILIGENCE
11:47AM 3 MATERIALS WERE SENT, BUT HE HAS NO IDEA WHAT IS IN THE DUE
11:47AM 4 DILIGENCE MATERIALS.

11:47AM 5 THAT'S AN ARGUMENT THAT CAN BE MADE.

11:47AM 6 BUT I THINK A FAIR INFERENCE FROM THE FACT THAT HE'S
11:47AM 7 SIGNING THE DOCUMENT UNDER WHICH THE DUE DILIGENCE MATERIALS
11:47AM 8 ARE PROVIDED SUPPORT AN INFERENCE THAT HE HAS SOME
11:47AM 9 UNDERSTANDING OF WHAT IS IN THE DUE DILIGENCE MATERIALS.

11:47AM 10 THE COURT: I'M SORRY TO INTERRUPT YOU.

11:47AM 11 BUT, MR. COOPERSMITH, THAT'S WHAT SWAYS ME TO THINK THAT
11:47AM 12 THAT THEN -- IF THAT'S THE TRAIL -- I DON'T KNOW HOW THIS IS
11:47AM 13 GOING TO COME OUT, BUT LET ME TELL YOU, IF THAT IS THE
11:47AM 14 FOUNDATION FOR THIS, THEN IT SEEMS TO BE A WEIGHT ISSUE AS
11:48AM 15 OPPOSED TO AN ADMISSIBILITY ISSUE.

11:48AM 16 IF, IN FACT, THERE IS -- THIS NDA WAS SIGNED AND THE
11:48AM 17 REASON FOR THAT WAS TO ALLOW THE MATERIALS FOR A PITCH,
11:48AM 18 INVESTMENT PITCH TO BE SENT, AND IT HAS PARTIES' SIGNATURES ON
11:48AM 19 IT, THEN ALBEIT AS SMALL AS THAT MIGHT BE, MINUTE AS THAT MIGHT
11:48AM 20 BE, IF IT INFORMS, IF IT'S PART OF THE PITCH, THEN THAT -- IT
11:48AM 21 SEEMS TO ME THAT THAT MIGHT BE ADMISSIBLE, AND THEN IT BECOMES
11:48AM 22 AN ISSUE OF WEIGHT, AS YOU SAID, THE DILUTION OF IT.

11:48AM 23 SO LET ME JUST SAY, I'M GOING TO WAIT TO SEE HOW THAT
11:48AM 24 FOUNDATION DEVELOPS AND SEE IF IT'S SUFFICIENT OR NOT.

11:48AM 25 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

11:48AM 1 WELL, I THINK THIS ISSUE OF SIGNING AN NDA IS A SLENDER

11:48AM 2 READ INDEED, AND ONE OF THE REASONS IS THAT THE NDA WOULD IN NO

11:48AM 3 WAY BE NECESSARY TO SEND MS. PETERSON OR RDV THE PARLOFF

11:48AM 4 ARTICLE OR A CITATION TO IT. THAT HAS NOTHING TO DO WITH IT.

11:49AM 5 THAT'S EXACTLY WHAT AN NDA DOES NOT COVER, RIGHT? THIS IS

11:49AM 6 A "FORTUNE" ARTICLE --

11:49AM 7 THE COURT: SURE, RIGHT. WELL, LET'S JUST SEE WHAT

11:49AM 8 DEVELOPS. WE'LL SEE HOW WIDE THAT NET DEVELOPS WITH THE

11:49AM 9 EVIDENCE.

11:49AM 10 WHAT WAS YOUR THIRD ISSUE?

11:49AM 11 MR. COOPERSMITH: OH. THANK YOU, YOUR HONOR.

11:49AM 12 IN THE SAME INVESTOR MATERIALS DOCUMENT THAT WE WERE JUST

11:49AM 13 TALKING ABOUT, WHICH IS EXHIBIT 4858, AND IT'S AT PAGE 104.

11:49AM 14 THIS IS ACTUALLY WHERE I THINK I MISCITED PAGE 104.

11:49AM 15 PAGE 104 IS WHERE THE PFIZER REPORT EXISTS. I THINK THE

11:49AM 16 PRESS PART WAS ANOTHER PAGE.

11:49AM 17 BUT THE PFIZER REPORT APPEARS ON PAGE 104 OF EXHIBIT 4858,

11:49AM 18 AND THE COURT IS FAMILIAR WITH THAT DOCUMENT. THIS IS THE

11:49AM 19 DOCUMENT THAT, AS IT EXISTS IN THIS EXHIBIT, HAS THE PFIZER

11:49AM 20 LOGO AND THE THERANOS LOGO, AND THEN IT HAS MANY PAGES OF

11:50AM 21 DESCRIPTION OF THE PROJECT THAT THEY WERE EXPECTING TO HAVE.

11:50AM 22 WE'RE NOT OBJECTING TO THE ADMISSIBILITY OF THAT REPORT.

11:50AM 23 I THINK MS. PETERSON WILL SAY THAT SHE RECEIVED THAT BINDER AND

11:50AM 24 THIS WAS AMONG THE THINGS THAT SHE REVIEWED IN HELPING RDV TO

11:50AM 25 MAKE AN INVESTMENT DECISION.

11:50AM 1 SO WE'RE NOT ASKING FOR THE REPORT TO BE EXCLUDED.

11:50AM 2 WHAT WE ARE ASKING FOR, YOUR HONOR, IS FOR THE GOVERNMENT

11:50AM 3 NOT TO BE ABLE TO HIGHLIGHT THE LOGOS ISSUE BECAUSE, AS THE

11:50AM 4 COURT MAY REMEMBER FROM ANOTHER ARGUMENT INVOLVING

11:50AM 5 SCHERING-PLOUGH, AT THAT TIME THE COURT ALLOWED THE

11:50AM 6 SCHERING-PLOUGH LOGOS ISSUE INTO EVIDENCE BECAUSE THERE WAS

11:50AM 7 EVIDENCE THAT MR. BALWANI AT LEAST HAD POSSESSION IN HIS EMAIL

11:50AM 8 ACCOUNT OF A SCHERING-PLOUGH REPORT WITHOUT THE LOGOS.

11:50AM 9 AND THERE WAS EVIDENCE THAT HE HAD POSSESSION OF THE

11:50AM 10 DOCUMENT WITH THE SCHERING-PLOUGH LOGO.

11:50AM 11 THAT DOES NOT EXIST FOR PFIZER, SO THERE'S NO EVIDENCE

11:50AM 12 THAT MR. BALWANI HAS EVER SEEN THE PFIZER REPORT WITHOUT THE

11:50AM 13 PFIZER LOGO.

11:50AM 14 SO AGAIN, THE REPORT IS PART OF EXHIBIT 4858, AND IT WILL

11:51AM 15 COME IN WITH THAT EXHIBIT, BUT WE DON'T THINK THE GOVERNMENT

11:51AM 16 SHOULD BE ALLOWED TO HIGHLIGHT, WELL, DO YOU SEE THIS LOGO?

11:51AM 17 AND DID THAT MAKE YOU THINK THAT --

11:51AM 18 THE COURT: SO ARE YOU SAYING THAT THE LOGO SHOULD

11:51AM 19 BE REDACTED FROM THE EXHIBIT?

11:51AM 20 MR. COOPERSMITH: NO. I THINK THE LOGO CAN REMAIN.

11:51AM 21 THE COURT: OH.

11:51AM 22 MR. COOPERSMITH: IT'S A MATTER OF NOT ASKING

11:51AM 23 QUESTIONS DESIGNED TO ELICIT TESTIMONY THAT, YEAH, THE FACT

11:51AM 24 THAT PFIZER'S LOGO WAS ON THERE REALLY MATTERED TO ME AND THAT

11:51AM 25 MADE ME THINK IT WAS A PFIZER REPORT, RIGHT.

11:51AM 1 THE COURT: HOW DO WE DO THAT? IF IT COMES IN WITH
11:51AM 2 THE LOGO ON IT, THE DOCUMENT SAYS WHAT IT SAYS, BUT YOU WOULD
11:51AM 3 ASK MR. LEACH NOT TO DRAW ATTENTION TO IT?
11:51AM 4 MR. COOPERSMITH: YEAH, NOT TO HIGHLIGHT AND NOT ASK
11:51AM 5 QUESTIONS THAT ARE DESIGNED TO SHOW THAT THERE IS SOMETHING
11:51AM 6 WRONG WITH THE FACT THAT PFIZER'S LOGO WAS THERE AND THAT SORT
11:51AM 7 OF THING.
11:51AM 8 THE COURT: SO HE COULD ASK, OR YOU COULD ASK, DO
11:51AM 9 YOU SEE TWO LOGOS ON THERE?
11:51AM 10 MR. COOPERSMITH: I DON'T THINK, HAVING MADE THIS
11:51AM 11 ARGUMENT, YOUR HONOR, I'M GOING TO HIGHLIGHT ON CROSS.
11:51AM 12 THE COURT: THAT'S WHAT I'M TRYING TO DEFINE IS WHEN
11:51AM 13 YOU SAY HIGHLIGHT, IF MR. LEACH SAYS, OKAY, WHAT IS THIS?
11:52AM 14 WELL, THIS IS A DOCUMENT AND IT HAS PFIZER AND IT HAS
11:52AM 15 THERANOS ON IT.
11:52AM 16 MR. COOPERSMITH: THAT'S OKAY.
11:52AM 17 IT'S JUST WHEN YOU START SAYING, WELL, DID THE PFIZER
11:52AM 18 LOGO, DID THAT MATTER TO YOU? DID THAT SEND YOU SOME MESSAGE
11:52AM 19 ABOUT WHO ACTUALLY WROTE THIS REPORT? AND WOULD IT BE
11:52AM 20 INTERESTING FOR YOU TO KNOW, LIKE, ACTUALLY THERE'S ANOTHER
11:52AM 21 VERSION? OR WOULD IT BE INTERESTING FOR YOU TO KNOW THAT
11:52AM 22 PFIZER DIDN'T APPROVE THIS?
11:52AM 23 OR THINGS LIKE THAT, RIGHT?
11:52AM 24 THE COURT: SO I THINK FIRST QUESTION IS ONE IS
11:52AM 25 LIKELY TO BE ASKED, I DON'T KNOW. WE WILL HAVE MR. LEACH --

11:52AM 1 YOU AND I KEEP GETTING INTO MR. LEACH'S CASE ABOUT WHAT HE'S
11:52AM 2 GOING TO ASK -- BUT IT SEEMS THAT, BASED ON OUR CONVERSATION,
11:52AM 3 IF THAT DOCUMENT COMES IN, THE QUESTION WOULD BE, DID YOU RELY
11:52AM 4 ON THIS FOR YOUR INVESTMENT DECISION? YES, NO? IF SO, WHY?
11:52AM 5 WITHOUT ASKING THE QUESTION, IS THE FACT THAT THERE'S A
11:52AM 6 BRAND ON THERE, DID THAT INFORM YOU?
11:52AM 7 MR. COOPERSMITH: EXACTLY, YOUR HONOR.
11:52AM 8 IF THE GOVERNMENT WANTS TO ASK MS. PETERSON QUESTIONS
11:52AM 9 ABOUT WHETHER SHE RELIED ON THE REPORT, THAT'S FAIR GAME.
11:53AM 10 IT'S JUST ABOUT WHETHER SHE RELIED ON THE FACT THAT THERE
11:53AM 11 WAS A PFIZER LOGO OR WHETHER THAT WAS MEANINGFUL TO HER IN SOME
11:53AM 12 WAY. THAT'S WHERE THE LINE IS I THINK.
11:53AM 13 THE COURT: WELL, WE'VE MESSED AROUND WITH YOUR
11:53AM 14 DIRECT, MR. LEACH.
11:53AM 15 HOW WOULD YOU LIKE TO EXAMINE?
11:53AM 16 MR. LEACH: I APPRECIATE MR. COOPERSMITH'S
11:53AM 17 CONSTRUCTIVE SUGGESTIONS.
11:53AM 18 THIS IS A WEIGHT ISSUE, YOUR HONOR.
11:53AM 19 HE -- THE DEFENSE IS NOT OBJECTING TO THE ADMISSION OF THE
11:53AM 20 DOCUMENT. THEY'RE OBJECTING TO HIGHLIGHTS IN THE DOCUMENT AND
11:53AM 21 QUESTIONS IN THE DOCUMENT.
11:53AM 22 THAT, TO ME, SCREAMS OUT THAT THIS IS A WEIGHT ISSUE.
11:53AM 23 MS. PETERSON RECEIVES, IN THE DUE DILIGENCE MATERIALS THAT
11:53AM 24 MR. BALWANI AUTHORIZED, A REPORT WITH PFIZER'S LOGO AND
11:53AM 25 THERANOS'S LOGO WHICH SHE BELIEVED, NOT BECAUSE OF THE LOGOS,

11:53AM 1 BUT BECAUSE OF THE CONTENT OF THE ARTICLE, WERE THE CONCLUSIONS
11:53AM 2 OF PFIZER.

11:53AM 3 WE KNOW THAT THEY AREN'T.

11:53AM 4 I INTEND TO ASK HER, DID SHE THINK THAT THESE WERE
11:54AM 5 PFIZER'S CONCLUSIONS, AND DID THAT MATTER TO HER?

11:54AM 6 I DON'T NECESSARILY NEED TO DWELL ON THE LOGO.

11:54AM 7 BUT THIS ISSUE IS EMERGING BECAUSE WE'RE GOING TO HAVE, I
11:54AM 8 ANTICIPATE THERE MAY BE OTHER PHARMACEUTICAL WITNESSES WHO
11:54AM 9 TESTIFY TO THE VERSIONS THAT DON'T HAVE THE LOGOS.

11:54AM 10 SO THIS IS A WEIGHT QUESTION. WHAT DID MR. BALWANI KNOW
11:54AM 11 ABOUT THIS AND WHEN DID HE KNOW ABOUT IT?

11:54AM 12 WE KNOW FROM THE TEXT MESSAGES THAT HE WAS DIRECTING, OR
11:54AM 13 MS. HOLMES WAS ASKING HIM, OR TELLING HIM, I'M GOING TO INCLUDE
11:54AM 14 THE PFIZER REPORT IN THE INVESTMENT MATERIALS.

11:54AM 15 SO THERE'S EVIDENCE FROM THE TEXT MESSAGES ON PAGE 17 OF
11:54AM 16 5387 THAT THEY'RE DISCUSSING, DO WE INCLUDE THIS? DO WE NOT
11:54AM 17 INCLUDE THIS?

11:54AM 18 DURING THE CROSS-EXAMINATION OF MR. EDLIN, THE DEFENSE PUT
11:54AM 19 IN EMAILS BETWEEN PFIZER AND MR. BALWANI IN THE 2013 TO 2015
11:54AM 20 TIME PERIOD, WHICH ARE SUGGESTIVE THAT MR. BALWANI KNOWS
11:55AM 21 SOMETHING ABOUT THE PFIZER RELATIONSHIP.

11:55AM 22 IN ADDITION, IN THEIR OPENING STATEMENT THEY SAID THAT
11:55AM 23 MR. BALWANI DID HIS DUE DILIGENCE BEFORE COMING TO THE COMPANY,
11:55AM 24 AND WE THINK THAT DUE DILIGENCE WOULD INVOLVE UNDERSTANDING IN
11:55AM 25 AS MUCH DETAIL AS POSSIBLE WHAT THE COMPANY WAS OR WASN'T DOING

11:55AM 1 WITH PFIZER.

11:55AM 2 THEY THINK THAT THERE'S INSUFFICIENT -- AND WE ALSO HAVE

11:55AM 3 EVIDENCE THAT WITH RESPECT TO ANOTHER PHARMACEUTICAL COMPANY,

11:55AM 4 HE RECEIVED THE VERSION THAT HAD ONLY THE THERANOS LOGO AND A

11:55AM 5 VERSION THAT HAD BOTH THE THERANOS AND THE PHARMACEUTICAL

11:55AM 6 COMPANY.

11:55AM 7 AND I THINK IT'S A FAIR WEIGHT ARGUMENT. YOU KNOW, IF HE

11:55AM 8 HAD THAT INFORMATION FOR ONE PHARMACEUTICAL COMPANY, I THINK

11:55AM 9 THAT SUPPORTS THE EVIDENCE THAT HE HAD INFORMATION ABOUT OTHER

11:55AM 10 PHARMACEUTICAL COMPANIES.

11:55AM 11 IF THEY THINK THAT WE HAVEN'T TIED MR. BALWANI TO THIS

11:55AM 12 ISSUE OF THE DOCTRINE OF THE LOGOS, I'M SURE WE'LL HEAR ABOUT

11:55AM 13 THAT IN CLOSING ARGUMENT.

11:56AM 14 BUT THERE'S AMPLE EVIDENCE SHOWING THAT MR. BALWANI IS

11:56AM 15 INVOLVED IN THE PFIZER RELATIONSHIP, THAT HE KNOWS THE REVENUE

11:56AM 16 THAT IS NOT BEING GENERATED FROM IT, AND HE'S CONSULTING WITH

11:56AM 17 MS. HOLMES ABOUT JUDGMENTS ABOUT WHETHER TO INCLUDE IT OR NOT

11:56AM 18 INCLUDE IT IN INVESTOR MATERIALS.

11:56AM 19 DID HE KNOW ABOUT EVERY SINGLE ASPECT OF THE REPORT,

11:56AM 20 INCLUDING THE LOGO? THAT'S A WEIGHT ARGUMENT.

11:56AM 21 THE COURT: SO ARE YOU GOING TO -- THANK YOU.

11:56AM 22 ARE YOU GOING TO ASK, YOU RECEIVED THIS, YOU SAW THE

11:56AM 23 LOGOS, WAS THIS MATERIAL TO YOUR DECISION AND WHY? AND THAT'S

11:56AM 24 IT?

11:56AM 25 MR. LEACH: YES.

11:56AM 1 THE COURT: OKAY. OKAY. THAT SEEMS FAIR GAME TO
11:56AM 2 ME.

11:56AM 3 MR. COOPERSMITH: WELL, I MEAN, THE FACT THAT
11:56AM 4 THERE'S A DOCUMENT AND IT HAS LOGOS ON IT, SURE.

11:56AM 5 BUT WHAT WOULD BE A PROBLEM -- AND AGAIN, I'M NOT TRYING
11:56AM 6 TO PUT WORDS OR SUGGEST QUESTIONS TO MR. LEACH, BUT I'M JUST
11:56AM 7 TRYING TO EXPLORE THE LENGTH OF THIS, RIGHT?

11:56AM 8 THE COURT: YES, SURE.

11:57AM 9 MR. COOPERSMITH: SO THERE WOULD HAVE TO BE A GOOD
11:57AM 10 FAITH BASIS TO ASK QUESTIONS THAT ARE DESIGNED TO CAST DOUBT ON
11:57AM 11 WHETHER THE PFIZER LOGO WAS REALLY AUTHENTICALLY ON THE
11:57AM 12 DOCUMENT.

11:57AM 13 THE COURT: I DIDN'T HEAR MR. LEACH SAY THAT, AT
11:57AM 14 LEAST AS TO THIS WITNESS. MAYBE I MISHEARD HIM. BUT HE WAS
11:57AM 15 TALKING ABOUT OTHER WITNESSES THAT MAY COME UP.

11:57AM 16 I DON'T KNOW IF THIS WITNESS CAN TESTIFY ABOUT THIS. MY
11:57AM 17 SENSE IS THAT SHE HAY NOT BE ABLE TO TESTIFY ABOUT THE
11:57AM 18 LEGITIMACY OF ONE DOCUMENT OR ANOTHER.

11:57AM 19 THE GRAVAMEN OF HER TESTIMONY, I THINK, IS THAT SHE WAS
11:57AM 20 EMPOWERED BY THE DEVOS FAMILY TO INVESTIGATE INVESTMENTS, TO
11:57AM 21 MAKE RECOMMENDATIONS TO THEM AS TO INVESTMENTS, AND THE
11:57AM 22 EXAMINATION WILL BE IF SHE MADE A RECOMMENDATION, AND IF SO,
11:57AM 23 WHY, AND WHAT DID SHE RELY ON IN THAT DECISION. THAT'S IT.

11:57AM 24 MR. COOPERSMITH: SURE, YOUR HONOR.

11:57AM 25 THE TYPE OF QUESTION -- AND THAT'S ALL FINE.

11:58AM 1 THE TYPE OF QUESTION THAT WOULD BE IMPROPER IS, YOU KNOW,

11:58AM 2 MS. PETERSON, DOES THE PRESENCE OF THE PFIZER LOGO ON IT, DID

11:58AM 3 THAT MAKE YOU THINK THAT PFIZER ACTUALLY AUTHORED THIS REPORT?

11:58AM 4 RIGHT?

11:58AM 5 AND THAT TYPE OF QUESTION, OR EVEN GOING BEYOND THAT,

11:58AM 6 WOULD BE IMPROPER BECAUSE THERE'S NO GOOD FAITH BASIS TO

11:58AM 7 BELIEVE THAT MR. BALWANI -- THERE'S NO EVIDENCE THAT

11:58AM 8 MR. BALWANI KNOWS ANYTHING ABOUT THIS DOCUMENT EVER BEING

11:58AM 9 ANYTHING OTHER THAN A DOCUMENT WITH A PFIZER LOGO BECAUSE

11:58AM 10 THERE'S NO EVIDENCE THAT HE EVER RECEIVED IT IN ANY OTHER FORM.

11:58AM 11 I ALSO BELIEVE THAT THE REPORT WAS BEFORE HIS TIME AT

11:58AM 12 THERANOS.

11:58AM 13 SO THERE'S A REPORT. IF SOMEONE PUT A PFIZER LOGO ON IT,

11:58AM 14 THEN THAT'S, ACCORDING TO THE EVIDENCE IN THIS CASE, NOT

11:58AM 15 SOMETHING THAT IS KNOWN TO MR. BALWANI.

11:58AM 16 THE COURT: SO SHE'S NOT -- YOU WOULD OBJECT TO HER

11:58AM 17 TESTIFYING AS TO WHY THIS WAS MATERIAL TO HER BECAUSE IT HAD A

11:58AM 18 PFIZER LOGO ON IT?

11:58AM 19 MR. COOPERSMITH: WELL, QUESTIONS DESIGNED TO

11:58AM 20 ELICIT, WHAT WAS REALLY IMPORTANT TO ME, FROM MS. PETERSON'S

11:59AM 21 PERSPECTIVE, IS THAT IT HAD THE PFIZER LOGO.

11:59AM 22 IF SHE WANTS TO TESTIFY THAT SHE LOOKED AT THE REPORT AND

11:59AM 23 THE REPORT HAD MEANING TO HER AND INFLUENCED HER DECISIONS AND

11:59AM 24 RECOMMENDATIONS, THAT'S FINE.

11:59AM 25 IT'S REALLY JUST THIS NARROW QUESTION ABOUT TRYING TO

11:59AM 1 ELICIT TESTIMONY THAT IS DESIGNED TO SHOW THAT THERE IS
11:59AM 2 SOMETHING WRONG WITH THE FACT THAT THERE'S A LOGO OF PFIZER ON
11:59AM 3 THE DOCUMENT. THAT'S WHERE IT'S IMPROPER.
11:59AM 4 THE COURT: DOES THAT, DOES THAT BLEED OVER TO A
11:59AM 5 QUESTION ABOUT, WHAT DO YOU SEE ON THE DOCUMENT?
11:59AM 6 I SEE A BRAND. I SEE A BRAND NAME HERE.
11:59AM 7 OKAY. DID THAT INFLUENCE YOUR DECISION?
11:59AM 8 YES, IT DID.
11:59AM 9 WHY?
11:59AM 10 BECAUSE THERE'S A BRAND NAME ON IT AND I FEEL STRONGLY
11:59AM 11 ABOUT PFIZER. THEY'RE WORLD HEROES NOW. THEY'VE CREATED A
11:59AM 12 VACCINE THAT SAVED LIVES.
11:59AM 13 NOT AT THE TIME OF THE DOCUMENT OF COURSE.
11:59AM 14 BUT JUST THE BRANDING ALONE, IS THAT WRONG FOR HER TO BE
11:59AM 15 ABLE TO SAY THAT?
11:59AM 16 MR. COOPERSMITH: YOUR HONOR, THOSE KINDS OF
11:59AM 17 QUESTIONS ARE IMPROPER BECAUSE THEY ARE DRAWING ATTENTION TO
12:00PM 18 THIS LOGO ISSUE.
12:00PM 19 AND IF THE COURT REMEMBERS THE SCHERING-PLOUGH ISSUE,
12:00PM 20 WHICH DID COME INTO EVIDENCE AND THERE WAS EVEN A WITNESS FROM
12:00PM 21 SCHERING-PLOUGH, THE ONLY REASON WHY THAT CAME INTO EVIDENCE,
12:00PM 22 BASED ON THE COURT'S RULING, WAS BECAUSE THERE WAS EVIDENCE
12:00PM 23 THAT OF COURSE THE GOVERNMENT SAID WENT TO WEIGHT, THAT
12:00PM 24 MR. BALWANI AT LEAST HAD POSSESSION OF A VERSION OF THE
12:00PM 25 SCHERING-PLOUGH REPORT -- I'M GOING TO SAY POSSESSION, MEANING

12:00PM 1 IT WAS ON HIS COMPUTER SYSTEM, WHETHER HE LOOKED AT IT OR NOT
12:00PM 2 IS NOT IN EVIDENCE -- BUT HE AT LEAST HAD POSSESSION OF A
12:00PM 3 SCHERING-PLOUGH REPORT WITHOUT THE SCHERING-PLOUGH LOGO.
12:00PM 4 THERE'S NOTHING LIKE THAT FOR PFIZER. THERE'S NO EVIDENCE
12:00PM 5 THAT MR. BALWANI EVER SAW THE SCHERING-PLOUGH REPORT WITHOUT
12:00PM 6 THE PFIZER. SO --
12:00PM 7 THE COURT: NO. I JUST DON'T UNDERSTAND -- AND I'M
12:00PM 8 SORRY I'M BEING A LITTLE THICK ON THIS I GUESS -- I JUST DON'T
12:00PM 9 UNDERSTAND WHY SHE CAN'T SAY, I RECEIVED THIS IN THE PACKET;
12:00PM 10 YEAH, IT HAS -- YOU KNOW, IT IS WHAT IT IS. THE DOCUMENT
12:00PM 11 SPEAKS FOR ITSELF.
12:00PM 12 AND IT WAS OR WASN'T MATERIAL TO MY DECISION FOR WHATEVER
12:00PM 13 REASON.
12:00PM 14 MR. COOPERSMITH: SO, YOUR HONOR, WE CAN'T -- I
12:00PM 15 CERTAINLY CAN'T THINK OF ALL OF THE QUESTIONS THAT MR. LEACH IS
12:01PM 16 CAPABLE OF ASKING, BUT I THINK THE POINT TO ME OUGHT TO BE
12:01PM 17 CLEAR, THAT WHAT MR. LEACH CAN SAY, YOU SEE THIS DOCUMENT? YOU
12:01PM 18 SEE IT'S GOT PFIZER AT THE TOP? OKAY.
12:01PM 19 BUT ONCE HE STARTS GETTING INTO, DID YOU REALLY THINK THAT
12:01PM 20 THIS WAS A PFIZER REPORT, YOU KNOW? DID THE FACT THAT THIS HAD
12:01PM 21 THE IMPRIMATUR WITH A LOGO OF PFIZER, DID THAT MAKE A
12:01PM 22 DIFFERENCE? IF THIS JUST A THERANOS REPORT, WOULD THAT -- WHEN
12:01PM 23 YOU START GETTING INTO THAT KIND OF THING, THAT'S WHERE THE
12:01PM 24 PROBLEM IS.
12:01PM 25 BUT, YEAH, THE DOCUMENT IS WHAT IT IS, AND IT'S COMING

12:01PM 1 INTO EVIDENCE I BELIEVE.

12:01PM 2 THE COURT: BUT IF SHE SAYS, YEAH, I LOOKED AT IT

12:01PM 3 AND IT HAS THESE TWO BRAND NAMES ON IT. I LOOKED AT IT, IT

12:01PM 4 INFLUENCED ME --

12:01PM 5 MR. COOPERSMITH: RIGHT.

12:01PM 6 THE COURT: -- BECAUSE OF THE BRAND NAMES. BUT THAT

12:01PM 7 WAS ONE THING, BUT THE INFORMATION ON IT ALSO.

12:01PM 8 MR. COOPERSMITH: SHE MAY SAY THAT, YOUR HONOR. WE

12:01PM 9 DON'T KNOW THAT.

12:01PM 10 BUT THE ISSUE IS THAT WE CAN'T CONTROL EVERYTHING THAT

12:01PM 11 COMES OUT OF THE WITNESS'S MOUTH.

12:01PM 12 WHAT WE CAN CONTROL IS MR. LEACH DRAWING SOME ATTENTION TO

12:01PM 13 SOME KIND OF IMPROPRIETY.

12:01PM 14 THE COURT: OKAY. I THINK I UNDERSTAND.

12:01PM 15 DO YOU UNDERSTAND, MR. LEACH?

12:01PM 16 MR. LEACH: I DO, YOUR HONOR.

12:02PM 17 THE COURT: ALL RIGHT. WELL, AS TO THIS, I WILL

12:02PM 18 PERMIT QUESTIONS ABOUT WHAT THE DOCUMENT IS AND WHAT IT SAYS,

12:02PM 19 AND ALSO QUESTIONS AS TO WHETHER IT INFORMED HER DECISION, HER

12:02PM 20 INVESTMENT DECISION, AND SHE CAN SAY WHY.

12:02PM 21 ANYTHING FURTHER WILL HAVE TO -- AND I TEND TO AGREE WITH

12:02PM 22 MR. COOPERSMITH, THIS ISN'T A SEARCH FOR WHETHER A DOCUMENT WAS

12:02PM 23 ALTERED OR NOT FROM THIS WITNESS.

12:02PM 24 THIS IS A SEARCH FOR WHAT INFORMED HER DECISION AND WHY.

12:02PM 25 MR. LEACH: UNDERSTOOD, YOUR HONOR.

12:02PM 1 THE COURT: THAT MAKES SENSE TO ME.

12:02PM 2 AS TO YOUR FIRST QUESTION REGARDING THE INQUIRY ABOUT HER

12:02PM 3 AWARENESS OF A RELATIONSHIP, I DO THINK -- I AM GOING TO PERMIT

12:02PM 4 THAT QUESTION IF SHE, IF SHE KNEW ABOUT THAT.

12:02PM 5 I DO THINK THAT THAT IS RELEVANT TO AN INVESTMENT

12:02PM 6 DECISION.

12:02PM 7 WE'VE HEARD OTHER WITNESSES, NOT IN THIS CASE, BUT I

12:03PM 8 REFERENCED THE SAFEWAY GENTLEMAN WHO WAS THE CEO OF SAFEWAY, I

12:03PM 9 THINK HE WAS ASKED, WOULD THAT HAVE MADE A DIFFERENCE IF YOU

12:03PM 10 KNEW? AND HE TALKED ABOUT -- HE'S A CORPORATE PERSON, AND HE

12:03PM 11 TALKED ABOUT SIMILAR THINGS THAT MR. LEACH TALKED ABOUT

12:03PM 12 INFORMING A DECISION. WELL, IF THERE WAS A RELATIONSHIP, THAT

12:03PM 13 WOULD PRESENT CONFLICT. I THINK HE EVEN TALKED ABOUT CONFLICTS

12:03PM 14 OF INTEREST. IT WOULD TALK ABOUT THE WISDOM OF OPERATIONAL

12:03PM 15 FUNCTIONS.

12:03PM 16 OF COURSE, THIS WAS JUST HIS OPINION AS A CEO HIMSELF, BUT

12:03PM 17 HE RAISED THOSE ISSUES.

12:03PM 18 I THINK THERE'S SOME CURRENCY IN THOSE OBSERVATIONS AS TO

12:03PM 19 AN INVESTMENT AND A BUSINESS RELATIONSHIP FOR AN INVESTOR TO

12:03PM 20 MAKE A FULLY INFORMED DECISION ABOUT THAT, SO I WOULD ALLOW

12:03PM 21 THAT QUESTION.

12:03PM 22 IT IS MORE INEXTRICABLY INTERTWINED, IF YOU WILL, TO THE

12:03PM 23 SCHEME THAN NOT, AND I DON'T THINK 403 ISSUES PRECLUDE ITS

12:03PM 24 ADMISSION.

12:03PM 25 AS TO NUMBER 2, THE EXHIBIT 1944, THAT IS A LET'S HURRY UP

12:04PM 1 AND WAIT AND SEE WHAT HAPPENS WITH THAT FOUNDATIONALLY OR NOT.

12:04PM 2 I THINK I'VE TOLD YOU WHAT -- THE OBSERVATIONS THAT I

12:04PM 3 HAVE, AND WE'LL SEE IF THAT FOUNDATION CAN BE LAID.

12:04PM 4 SO LET'S TAKE OUR BREAK. WE'LL TAKE ABOUT 15 MINUTES, I

12:04PM 5 GUESS, SOMETHING LIKE THAT FOR US, AND THEN WE'LL COME BACK.

12:04PM 6 AND THEN THIS WITNESS IS HERE?

12:04PM 7 MR. LEACH: YES, YOUR HONOR.

12:04PM 8 THE COURT: AND WE'LL GO FOR A COUPLE OF HOURS. I

12:04PM 9 APOLOGIZE, BUT WE'LL DO THE BEST THAT WE CAN TODAY.

12:04PM 10 MR. LEACH: THANK YOU, YOUR HONOR.

12:04PM 11 MR. COOPERSMITH: OKAY. THANK YOU.

12:04PM 12 (RECESS FROM 12:04 P.M. UNTIL 12:24 P.M.)

12:26PM 13 (JURY IN AT 12:26 P.M.)

12:26PM 14 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

12:26PM 15 THE JURY IS PRESENT. ALL COUNSEL ARE PRESENT.

12:26PM 16 THANK YOU FOR YOUR PATIENCE, LADIES AND GENTLEMEN. I DID

12:26PM 17 NEED TO KEEP COUNSEL A LITTLE LONGER TO HELP ME WITH SOME

12:26PM 18 THINGS.

12:26PM 19 DOES THE GOVERNMENT HAVE ANOTHER WITNESS?

12:26PM 20 MR. LEACH: WE DO, YOUR HONOR.

12:26PM 21 THE UNITED STATES CALLS LISA PETERSON.

12:26PM 22 THE COURT: THANK YOU.

12:26PM 23 GOOD AFTERNOON.

12:26PM 24 IF YOU COULD COME HERE AND STAND HERE FOR A MOMENT WHILE

12:26PM 25 YOU FACE OUR COURTROOM DEPUTY AND RAISE YOUR RIGHT HAND, SHE

12:26PM 1 HAS A QUESTION FOR YOU.

12:26PM 2 (GOVERNMENT'S WITNESS, LISA PETERSON, WAS SWORN.)

12:27PM 3 THE WITNESS: I DO.

12:27PM 4 THE COURT: PLEASE HAVE A SEAT UP HERE. I'LL INVITE

12:27PM 5 YOU TO MAKE YOURSELF COMFORTABLE.

12:27PM 6 FEEL FREE TO ADJUST THE CHAIR AND THE MICROPHONE AS YOU

12:27PM 7 NEED.

12:27PM 8 THAT MICROPHONE WILL HAVE TO COME DOWN, WON'T IT. IT WILL

12:27PM 9 BEND DOWN A LITTLE MORE IF YOU WOULD LIKE.

12:27PM 10 IF YOU'RE VACCINATED AND FULLY BOOSTED, YOU CAN TAKE YOUR

12:27PM 11 MASK OFF. THANK YOU.

12:27PM 12 THE WITNESS: YES, UH-HUH.

12:27PM 13 THE COURT: WHEN YOU ARE COMFORTABLE, WOULD YOU

12:27PM 14 PLEASE STATE YOUR NAME AND THEN SPELL IT, PLEASE.

12:27PM 15 THE WITNESS: LISA PETERSON. L-I-S-A,

12:27PM 16 P-E-T-E-R-S-O-N.

12:27PM 17 THE COURT: THANK YOU.

12:27PM 18 AND, MS. PETERSON, IF YOU COULD JUST MAYBE BEND THAT MIKE

12:27PM 19 UP. THERE WE GO. I THINK THAT MIGHT WORK BETTER.

12:27PM 20 THE WITNESS: IS THAT BETTER?

12:27PM 21 THE COURT: YES, I THINK SO. LET'S SEE.

12:27PM 22 THE WITNESS: THAT'S BETTER.

12:27PM 23 MR. LEACH: I THINK THAT WORKS, MS. PETERSON.

12:27PM 24 DOES THAT WORK FOR THE COURT?

12:27PM 25 THE COURT: YES. THANK YOU.

12:27PM 1 MR. LEACH: MAY I INQUIRE?

12:27PM 2 THE COURT: YES.

12:27PM 3 **DIRECT EXAMINATION**

12:28PM 4 BY MR. LEACH:

12:28PM 5 Q. GOOD AFTERNOON, MS. PETERSON.

12:28PM 6 A. HI.

12:28PM 7 Q. I NOTE YOU'VE TAKEN YOUR MASK OFF. IF YOU'RE FULLY

12:28PM 8 VACCINATED AND BOOSTED, AND IF YOU'RE COMFORTABLE, YOU CAN

12:28PM 9 TESTIFY WITHOUT A MASK.

12:28PM 10 A. RIGHT.

12:28PM 11 Q. AND WHERE DO YOU WORK?

12:28PM 12 A. I WORK FOR RDV CORPORATION.

12:28PM 13 Q. WHAT IS RDV CORPORATION?

12:28PM 14 A. RDV CORPORATION IS THE FAMILY OFFICE FOR THE DEVOS FAMILY

12:28PM 15 IN GRAND RAPIDS, MICHIGAN. I WORK IN THEIR INVESTMENT GROUP.

12:28PM 16 Q. WHEN YOU SAY YOU WORK IN THEIR INVESTMENT GROUP, WHAT DO

12:28PM 17 YOU DO?

12:28PM 18 A. WE INVEST IN PRIVATE EQUITY FIRMS ON BEHALF OF THE FAMILY.

12:28PM 19 Q. HOW LONG HAVE YOU WORKED FOR RDV CORPORATION?

12:28PM 20 A. I'VE BEEN THERE 17 YEARS.

12:28PM 21 Q. OKAY. IN APPROXIMATELY OCTOBER 2014, DID RDV CORPORATION

12:28PM 22 MAKE AN INVESTMENT IN THERANOS?

12:28PM 23 A. YES, WE DID.

12:28PM 24 Q. WE'RE GOING TO GET TO THAT IN A LITTLE DETAIL, BUT BEFORE

12:28PM 25 WE DO, COULD YOU BRIEFLY DESCRIBE FOR US YOUR EDUCATIONAL AND

12:28PM 1 PROFESSIONAL BACKGROUND?

12:28PM 2 A. I GRADUATED FROM MICHIGAN STATE UNIVERSITY IN 1992, AND I

12:29PM 3 WORKED AT A COMMERCIAL BANK FOR A WHILE, AND THEN AN INVESTMENT

12:29PM 4 BANK FOR ABOUT SIX YEARS, AND THEN I'VE BEEN AT RDV EVER SINCE.

12:29PM 5 Q. WHEN YOU WORKED AT THE INVESTMENT BANK, WHAT WERE YOUR JOB

12:29PM 6 RESPONSIBILITIES?

12:29PM 7 A. WE DID A LOT OF PRIVATE PLACEMENTS, SO IN FINDING

12:29PM 8 INVESTORS TO INVEST IN CERTAIN COMPANIES AND DO THINGS, AS WELL

12:29PM 9 AS BUYING AND SELLING BUSINESSES.

12:29PM 10 Q. OKAY. AND WHEN DID YOU START WORKING FOR RDV?

12:29PM 11 A. 2000 -- JANUARY OF 2005.

12:29PM 12 Q. AND DO YOU STILL WORK THERE TODAY?

12:29PM 13 A. YES.

12:29PM 14 Q. SO APPROXIMATELY 17 YEARS?

12:29PM 15 A. YES.

12:29PM 16 Q. AND WHAT POSITION -- MY QUESTIONS WILL RELATE PRIMARILY TO

12:29PM 17 THE TIME PERIOD 2014 AND 2015.

12:29PM 18 WHAT WAS YOUR POSITION IN THOSE YEARS?

12:29PM 19 A. I WAS A MANAGING DIRECTOR IN THE INVESTMENT GROUP.

12:29PM 20 Q. OKAY. AND AS A MANAGING DIRECTOR IN THE INVESTMENT GROUP,

12:29PM 21 COULD YOU DESCRIBE FOR US YOUR JOB RESPONSIBILITIES? WHAT DID

12:29PM 22 YOU DO?

12:29PM 23 A. I MANAGED THE U.S. PORTFOLIO OF INVESTMENTS IN THE PRIVATE

12:30PM 24 EQUITY FIRMS THAT WE INVESTED IN.

12:30PM 25 Q. WHAT DO YOU MEAN BY "PRIVATE EQUITY FIRMS"?

12:30PM 1 A. WE DON'T INVEST IN COMPANIES DIRECTLY NORMALLY, AND WE
12:30PM 2 DON'T DO ANY VENTURE OR ANY PUBLIC INVESTING.
12:30PM 3 ALL WE DO IS INVEST IN PRIVATE EQUITY FIRMS, AND THEN
12:30PM 4 THOSE FIRMS USE OUR MONEY AND INVEST IN OTHER COMPANIES.
12:30PM 5 Q. CAN YOU GIVE ME AN EXAMPLE OF SOME OF THE INVESTMENTS OF
12:30PM 6 PRIVATE EQUITY FIRMS THAT RDV INVESTS IN, MIGHT INVEST IN?
12:30PM 7 A. THE NAMES PROBABLY NOBODY WOULD KNOW, LIKE VISTA EQUITY,
12:30PM 8 WE WOULD INVEST IN THAT, AND THEN THEY WOULD TAKE MULTIPLE
12:30PM 9 INVESTORS' MONEY AND INVEST IN COMPANIES, AND I MANAGE THOSE
12:30PM 10 TYPES OF RELATIONSHIPS.
12:30PM 11 Q. OKAY. SO YOU MANAGE RELATIONSHIPS WITH OTHER -- WITH
12:30PM 12 PRIVATE EQUITY FIRMS?
12:30PM 13 A. CORRECT.
12:30PM 14 Q. AND MAKE SURE THEY'RE DOING A GOOD JOB IN INVESTING YOUR
12:30PM 15 MONEY?
12:31PM 16 A. CORRECT.
12:31PM 17 Q. AND IN OR AROUND 2014, DID YOU BECOME FAMILIAR WITH A
12:31PM 18 COMPANY CALLED THERANOS?
12:31PM 19 A. YES.
12:31PM 20 Q. AND HOW DID YOU FIRST BECOME AWARE OF THERANOS?
12:31PM 21 A. OUR CEO AND CIO, THAT'S ONE PERSON, IS JERRY TUBERGEN, HE
12:31PM 22 HAD BOTH TITLES, HE WAS MADE AWARE OF THERANOS AT A BDT
12:31PM 23 CONFERENCE. HE MET ELIZABETH HOLMES. AND I HAPPENED TO BE ON
12:31PM 24 THE PLANE ON THE WAY BACK RIDING WITH HIM, AND HE TOLD ME ALL
12:31PM 25 ABOUT IT.

12:31PM 1 Q. OKAY. WHEN YOU SAY MR. TUBERGEN TOLD YOU ALL ABOUT IT,
12:31PM 2 DID HE EXPRESS SOME ENTHUSIASM ABOUT A POTENTIAL INVESTMENT?
12:31PM 3 A. YES.
12:31PM 4 Q. AND WERE YOU GIVEN ANY RESPONSIBILITIES IN CONNECTION WITH
12:31PM 5 A POSSIBLE INVESTMENT IN THERANOS?
12:31PM 6 A. YES. I ACTUALLY ASKED ON THAT PLANE RIDE IF I COULD WORK
12:31PM 7 ON THE TRANSACTION IF THEY DECIDED TO MOVE FORWARD WITH IT, AND
12:31PM 8 HE SAID YES.
12:31PM 9 Q. WHEN YOU SAY YOU ASKED, DID YOU IN SOME SENSE VOLUNTEER
12:31PM 10 FOR THIS?
12:31PM 11 A. YES.
12:31PM 12 Q. WHY DID YOU VOLUNTEER FOR THIS?
12:31PM 13 A. I FOUND IT VERY INTERESTING. MY HUSBAND IS DIABETIC AND
12:32PM 14 HAS A LOT OF BLOOD TESTS, AND I MANAGE THE HEALTH CARE PRIVATE
12:32PM 15 EQUITY FIRMS THAT WE WORKED WITH, SO IT SORT OF WENT HAND IN
12:32PM 16 HAND WITH THAT.
12:32PM 17 Q. SO YOU HAD AN INTEREST IN THE SUBJECT MATTER? AM I
12:32PM 18 HEARING THAT CORRECT?
12:32PM 19 A. YES.
12:32PM 20 Q. AND WERE YOU ALSO IMPRESSED BY ELIZABETH HOLMES?
12:32PM 21 A. YES.
12:32PM 22 Q. OKAY. HOW SO?
12:32PM 23 A. JUST YOUNG, FEMALE, TOOK AN INTEREST IN WHAT SHE WAS
12:32PM 24 TRYING TO DO.
12:32PM 25 Q. OKAY. DID THIS POTENTIAL TRANSACTION WITH THERANOS DIFFER

12:32PM 1 FROM OTHER INVESTMENTS THAT YOU TYPICALLY WORKED ON FOR RDV?

12:32PM 2 A. YES. TYPICALLY, AGAIN, THERE'S A PRIVATE EQUITY FIRM IN

12:32PM 3 BETWEEN US. OFTENTIMES THE PRIVATE EQUITY FIRM WILL INVEST IN

12:32PM 4 SOMETHING THAT NEEDS MORE MONEY THAN THE FUND CAN DO AND THEY

12:32PM 5 WILL CALL US SO WE COINVEST ALONGSIDE OF THEM, SO I DO A LOT OF

12:32PM 6 THAT.

12:32PM 7 AND THAT'S SORT OF DIRECT. IT'S KIND OF INDIRECT, BUT

12:33PM 8 IT'S ALONGSIDE THE PRIVATE EQUITY FIRM.

12:33PM 9 THIS WAS SOMETHING THAT WAS SHOWN TO US INDIRECTLY THROUGH

12:33PM 10 BDT, BUT THEY DIDN'T HAVE ANY ROLE IN IT.

12:33PM 11 SO IT WAS VERY DIFFERENT THAN WHAT WE NORMALLY DO, YES.

12:33PM 12 Q. OKAY. DIFFERENT BECAUSE YOU WERE CONTEMPLATING INVESTING

12:33PM 13 DIRECTLY AS OPPOSED TO THROUGH --

12:33PM 14 THE COURT: MS. PETERSON, LET ME -- LET HIM FINISH

12:33PM 15 HIS QUESTION AND THEN YOU CAN ANSWER IT, AND HE'LL WAIT UNTIL

12:33PM 16 YOU'RE FINISHED.

12:33PM 17 THE WITNESS: GREAT. SORRY.

12:33PM 18 BY MR. LEACH:

12:33PM 19 Q. SO IN THIS CIRCUMSTANCE, YOU WERE CONTEMPLATING INVESTING

12:33PM 20 DIRECTLY INTO A COMPANY AS OPPOSED TO A PRIVATE EQUITY FIRM

12:33PM 21 THAT WOULD PICK THE INVESTMENTS?

12:33PM 22 A. YES.

12:33PM 23 Q. LET ME DRAW YOUR --

12:33PM 24 MAY I APPROACH, YOUR HONOR?

12:33PM 25 THE COURT: YES.

12:33PM 1 MR. LEACH: (HANDING.)

12:34PM 2 Q. MS. PETERSON, I'VE PLACED BEFORE YOU A BINDER OF

12:34PM 3 DOCUMENTS, AND IF I COULD ASK YOU TO TURN TO TAB 1944 IN YOUR

12:34PM 4 BINDER.

12:34PM 5 DO YOU HAVE THAT IN FRONT OF YOU?

12:34PM 6 A. YES.

12:34PM 7 Q. OKAY. IS THIS AN EMAIL DATED SEPTEMBER 18TH, 2014, FROM

12:34PM 8 JERRY TUBERGEN?

12:34PM 9 A. YES.

12:34PM 10 Q. AND HE WAS YOUR BOSS AT RDV AT THE TIME?

12:34PM 11 A. CORRECT.

12:34PM 12 Q. AND THIS TIME PERIOD, SEPTEMBER OF 2014, IS THIS

12:34PM 13 CONSISTENT WITH THE TIME PERIOD WHEN YOU WERE FIRST APPROACHED

12:34PM 14 ABOUT WORKING ON A POTENTIAL INVESTMENT IN THERANOS?

12:34PM 15 A. YES.

12:34PM 16 Q. AND IS THIS -- WAS THIS EMAIL EXCHANGED IN THE ORDINARY

12:34PM 17 COURSE OF RDV'S BUSINESS?

12:34PM 18 A. IT WAS VERY COMMON TO -- FOR JERRY TO SEND SOMETHING TO

12:35PM 19 THE INVESTMENT COMMITTEE IF HE SAW SOMETHING THAT WAS

12:35PM 20 INTERESTING, BUT IT -- JERRY IS NOT NORMALLY THE ONE ROUTING

12:35PM 21 SOMETHING THAT HE JUST SAW. HE WAS JUST VERY -- HE, HE WAS

12:35PM 22 VERY INTERESTED AND ENTHUSED ABOUT WHAT HE HAD HEARD AT THE

12:35PM 23 MEETING THAT DAY.

12:35PM 24 Q. OKAY. AND WAS THIS PREPARED AT OR AROUND THE TIME OF THE

12:35PM 25 EMAIL BEING SENT?

12:35PM 1 A. YES.

12:35PM 2 Q. AND WAS IT MAINTAINED DURING THE ORDINARY COURSE OF RDV'S

12:35PM 3 BUSINESS?

12:35PM 4 A. YES.

12:35PM 5 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS --

12:35PM 6 THERE'S AN ATTACHMENT TO -- LET ME JUST ASK A FEW MORE

12:35PM 7 FOUNDATIONAL QUESTIONS, MS. PETERSON.

12:35PM 8 Q. THERE'S AN ATTACHMENT TO THE EMAIL THAT STARTS ON PAGE 2.

12:35PM 9 DO YOU SEE THAT?

12:35PM 10 A. YES.

12:35PM 11 Q. ARE YOU FAMILIAR WITH THE ATTACHMENT?

12:35PM 12 A. YES.

12:35PM 13 Q. AND WHAT IS THE ATTACHMENT?

12:35PM 14 A. IT'S AN ARTICLE THAT HE OBTAINED WHILE AT THAT MEETING,

12:35PM 15 AND WE WERE LOOKING AT IT ON THE PLANE RIDE ON THE WAY HOME.

12:36PM 16 Q. OKAY. AND DID YOU RELY ON THE ARTICLE IN THE COURSE OF

12:36PM 17 MAKING RECOMMENDATIONS ABOUT THERANOS?

12:36PM 18 A. YES.

12:36PM 19 Q. OKAY.

12:36PM 20 YOUR HONOR, AT THIS TIME THE GOVERNMENT OFFERS PAGE 2.

12:36PM 21 IT'S NUMBERED PAGE 2 OF EXHIBIT 1944.

12:36PM 22 IT'S THE FIRST PAGE OF THE DOCUMENT, BUT IT SAYS PAGE 2

12:36PM 23 DOWN AT THE BOTTOM?

12:36PM 24 THE COURT: MR. COOPERSMITH, DO YOU HAVE THAT?

12:36PM 25 MR. COOPERSMITH: YOUR HONOR, WE DON'T OBJECT TO THE

12:36PM 1 ADMISSION OF PAGE 2 OF EXHIBIT 1944 AS A BUSINESS RECORD OF
12:36PM 2 RDV.

12:36PM 3 THE COURT: OKAY.

12:36PM 4 MR. COOPERSMITH: IF THAT IS THE ONLY THING BEING
12:36PM 5 OFFERED, THEN NO OBJECTION TO THAT PAGE.

12:36PM 6 MR. LEACH: THAT'S ALL I'M OFFERING AT THIS TIME,
12:36PM 7 YOUR HONOR.

12:36PM 8 THE COURT: OKAY. THAT PAGE IS ADMITTED UNDER
12:36PM 9 803(6), AND IT MAY BE PUBLISHED.

12:37PM 10 (GOVERNMENT'S EXHIBIT 1944, PAGE 2, WAS RECEIVED IN
12:37PM 11 EVIDENCE.)

12:37PM 12 BY MR. LEACH:

12:37PM 13 Q. AND IF WE CAN PLEASE ZOOM IN ON THE TOP PORTION,
12:37PM 14 MS. WACHS.

12:37PM 15 MS. PETERSON, DO YOU SEE JERRY TUBERGEN'S NAME IN THE FROM
12:37PM 16 LINE AT THE VERY TOP?

12:37PM 17 A. YES.

12:37PM 18 Q. AND DO YOU SEE THE DATE, SEPTEMBER 18TH, 2014?

12:37PM 19 A. YES.

12:37PM 20 Q. OKAY. AND IS THIS EMAIL TO MEMBERS OF THE DEVOS FAMILY
12:37PM 21 WITH RESPONSIBILITY FOR INVESTMENTS IN THERANOS?

12:37PM 22 A. YES.

12:37PM 23 Q. MR. TUBERGEN WRITES HERE, "THIS MORNING I HAD ONE OF THE
12:37PM 24 MOST INTERESTING MEETINGS I CAN RECALL WITH THE WOMAN PROFILED
12:37PM 25 IN THE ATTACHED 'FORTUNE' MAGAZINE ARTICLE."

12:37PM 1 DO YOU SEE THAT LANGUAGE?

12:37PM 2 A. YES.

12:37PM 3 Q. AND DO YOU BELIEVE THAT TO BE A REFERENCE TO

12:37PM 4 ELIZABETH HOLMES?

12:37PM 5 A. YES.

12:37PM 6 Q. "IF YOU GET A CHANCE TO TAKE A LOOK AT THIS ARTICLE PRIOR

12:37PM 7 TO TOMORROW'S FC MEETING I WOULD ENCOURAGE YOU TO DO SO."

12:37PM 8 WHAT IS THE FC MEETING?

12:37PM 9 A. FAMILY COUNSEL.

12:37PM 10 Q. "I WOULD LIKE TO SEE IF WE CAN FIND 15 MINUTES TOMORROW TO

12:37PM 11 SHARE WITH YOU AND DISCUSS A VERY UNIQUE INVESTMENT

12:38PM 12 OPPORTUNITY."

12:38PM 13 DO YOU SEE THAT?

12:38PM 14 A. YES.

12:38PM 15 Q. AND "THE VERY UNIQUE INVESTMENT OPPORTUNITY" WAS THERANOS?

12:38PM 16 A. YES.

12:38PM 17 Q. OKAY. AND THIS IS ROUGHLY CONSISTENT WITH THE TIME PERIOD

12:38PM 18 WHEN YOU GOT INVOLVED IN THE THERANOS ASSIGNMENT?

12:38PM 19 A. YES.

12:38PM 20 Q. OKAY. AFTER -- AND DID YOU RECEIVE A COPY OF THE ARTICLE

12:38PM 21 THAT IS ATTACHED TO THIS EMAIL?

12:38PM 22 A. YES.

12:38PM 23 Q. OKAY. AFTER RECEIVING THE ARTICLE, AFTER BEING ASKED TO

12:38PM 24 LOOK AT THERANOS, WHAT DID YOU DO?

12:38PM 25 A. I READ THE ARTICLE FULLY AND THEN STARTED LOOKING AROUND

12:38PM 1 ON THE INTERNET.

12:38PM 2 Q. OKAY. WHEN YOU SAY YOU LOOKED AROUND ON THE INTERNET,

12:38PM 3 WHAT WERE YOU LOOKING FOR?

12:38PM 4 A. JUST GOGLING AND TRYING TO GET TO BETTER KNOW THE COMPANY

12:38PM 5 AND WHAT I COULD FIND OF HER, WATCHING VIDEOS ON YOUTUBE.

12:38PM 6 Q. OKAY. AND AT SOME POINT DID YOU HAVE MORE SUBSTANTIVE

12:38PM 7 CONVERSATIONS WITH MS. HOLMES ABOUT A POTENTIAL INVESTMENT IN

12:38PM 8 THERANOS?

12:38PM 9 A. YES.

12:38PM 10 Q. OKAY. LET ME DRAW YOUR ATTENTION TO EXHIBIT 5809.

12:39PM 11 DO YOU HAVE THAT?

12:39PM 12 A. YES.

12:39PM 13 Q. OKAY. IS THIS A TRUE AND CORRECT COPY OF AN EMAIL FROM

12:39PM 14 YOUR BOSS, MR. TUBERGEN, TO ELIZABETH HOLMES ON OR ABOUT

12:39PM 15 SEPTEMBER 19TH, 2014?

12:39PM 16 A. YES.

12:39PM 17 Q. AND DOES IT ATTACH A CONFIDENTIAL DISCLOSURE AGREEMENT

12:39PM 18 BETWEEN THERANOS AND RDV CORPORATION?

12:39PM 19 A. YES.

12:39PM 20 Q. OKAY. I DRAW YOUR ATTENTION TO THE BOTTOM OF PAGE 2.

12:39PM 21 DO YOU SEE A SIGNATURE UNDER THE LINE THERANOS?

12:39PM 22 A. YES.

12:39PM 23 Q. AND DO YOU SEE A NAME ASSOCIATED WITH THAT SIGNATURE?

12:39PM 24 A. YES.

12:39PM 25 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

12:39PM 1 EXHIBIT 5809.

12:39PM 2 MR. COOPERSMITH: WE OBJECT TO THE FIRST PAGE OF

12:39PM 3 EXHIBIT 5809 AS HEARSAY.

12:40PM 4 MR. LEACH: I CAN ASK MORE FOUNDATIONAL QUESTIONS,

12:40PM 5 YOUR HONOR.

12:40PM 6 THE COURT: SURE.

12:40PM 7 BY MR. LEACH:

12:40PM 8 Q. MS. PETERSON, WITH RESPECT TO PAGE 1, WAS THIS EMAIL

12:40PM 9 MAINTAINED IN THE ORDINARY COURSE OF RDV'S BUSINESS?

12:40PM 10 A. YES.

12:40PM 11 Q. AND WAS IT PRESERVED IN THE ORDINARY COURSE OF RDV'S

12:40PM 12 BUSINESS?

12:40PM 13 A. YES, IN OUR DOCUMENT MANAGEMENT SYSTEM.

12:40PM 14 Q. OKAY. AND WAS IT YOUR PRACTICE TO MAINTAIN AND RETAIN

12:40PM 15 AGREEMENTS BETWEEN RDV AND POTENTIAL INVESTMENTS --

12:40PM 16 A. YES.

12:40PM 17 Q. -- AS WELL AS THE COMMUNICATIONS BACK AND FORTH SO YOU

12:40PM 18 COULD HAVE A RECORD OF THAT?

12:40PM 19 A. YES.

12:40PM 20 MR. LEACH: YOUR HONOR, I OFFER PAGE 1 OF

12:40PM 21 EXHIBIT 5809.

12:40PM 22 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:40PM 23 (GOVERNMENT'S EXHIBIT 5809 WAS RECEIVED IN EVIDENCE.)

12:40PM 24 MR. LEACH: AND, MS. WACHS, IF WE CAN ZOOM IN TO THE

12:40PM 25 TOP.

12:41PM 1 Q. DO YOU SEE THE FROM LINE WITH MR. TUBERGEN'S NAME IN IT,
12:41PM 2 MS. PETERSON?
12:41PM 3 A. YES.
12:41PM 4 Q. AND ABOVE THAT THERE'S A CC LINE WITH DMOSLEY@CRAVATH.COM.
12:41PM 5 DO YOU SEE THAT?
12:41PM 6 A. YES.
12:41PM 7 Q. AND WHO IS DMOSLEY@CRAVATH.COM?
12:41PM 8 A. DAN MOSLEY IS AN ESTATE ATTORNEY THAT THE FAMILY HAS USED
12:41PM 9 IN THE PAST, AND HE IS -- HOW HE LEARNED ABOUT THERANOS, HE IS
12:41PM 10 THE ONE WHO SET UP THE MEETING WITH ELIZABETH IN CHICAGO AT THE
12:41PM 11 BDT CONFERENCE.
12:41PM 12 Q. AND CRAVATH, IS THAT A LAW FIRM?
12:41PM 13 A. YES.
12:41PM 14 Q. IS THAT A LAW FIRM IN NEW YORK?
12:41PM 15 A. I BELIEVE SO.
12:41PM 16 Q. OKAY.
12:41PM 17 A. HE WAS IN NEW YORK, YES.
12:41PM 18 Q. OKAY. AND MR. TUBERGEN WRITES, "HI ELIZABETH,
12:41PM 19 "I'VE ATTACHED AN EXECUTED COPY OF THE CONFIDENTIALITY
12:41PM 20 AGREEMENT. PLEASE LET ME KNOW IF YOU NEED ANYTHING ELSE.
12:41PM 21 "THANKS SO MUCH AND HAVE A GREAT WEEKEND."
12:41PM 22 DO YOU SEE THAT LANGUAGE?
12:41PM 23 A. YES.
12:41PM 24 Q. AND IF WE CAN GO TO PAGE 2.
12:42PM 25 WHAT WAS THE PURPOSE OF THIS CONFIDENTIAL DISCLOSURE

12:42PM 1 AGREEMENT?

12:42PM 2 A. THAT WE WOULD, AS AN INVESTOR AND AS WE CONTEMPLATE THE

12:42PM 3 INVESTMENT, THAT WE WOULD KEEP THINGS CONFIDENTIAL.

12:42PM 4 Q. OKAY. DID THIS IN ANY WAY FACILITATE THE PROVISION OF

12:42PM 5 DOCUMENTS TO RDV?

12:42PM 6 A. YES, WE WERE TO KEEP THOSE CONFIDENTIAL AS WELL.

12:42PM 7 Q. OKAY. AND BEFORE YOU RECEIVED ANY CONFIDENTIAL -- I

12:42PM 8 GUESS, WHY DID YOU ENTER INTO THIS AGREEMENT?

12:42PM 9 A. SO THAT WE COULD RECEIVE INFORMATION FROM THEM TO REVIEW

12:42PM 10 AS PART OF THE INVESTMENT DECISION.

12:42PM 11 Q. OKAY. UP IN THE TOP LEFT CORNER THERE'S A DATE,

12:42PM 12 AUGUST 19TH, 2014.

12:42PM 13 DO YOU SEE THAT?

12:42PM 14 A. YES.

12:42PM 15 Q. AND THEN DOWN AT THE BOTTOM THERE ARE TWO SIGNATURES.

12:42PM 16 A. YES.

12:42PM 17 Q. AND DO YOU SEE THE SIGNATURE OF SUNNY BALWANI?

12:43PM 18 A. YES.

12:43PM 19 Q. AND DO YOU RECOGNIZE MR. TUBERGEN'S SIGNATURE TO THE RIGHT

12:43PM 20 OF RDV?

12:43PM 21 A. YES.

12:43PM 22 Q. AND LET ME ASK YOU TO NEXT LOOK AT DOCUMENT 5432.

12:43PM 23 IS THIS ANOTHER EMAIL IN THE CHAIN THAT WE JUST SAW

12:43PM 24 RELATING TO THE CONFIDENTIAL DISCLOSURE AGREEMENT BETWEEN RDV

12:43PM 25 AND THERANOS?

12:43PM 1 A. YES.

12:43PM 2 Q. AND LIKE THE EMAIL THAT WE JUST LOOKED AT, WAS THIS

12:43PM 3 PREPARED IN THE ORDINARY COURSE OF RDV'S BUSINESS?

12:43PM 4 A. YES.

12:43PM 5 Q. AND DID YOU PRESERVE THIS IN THE ORDINARY COURSE OF RDV'S

12:43PM 6 BUSINESS?

12:43PM 7 A. YES.

12:43PM 8 Q. AND WAS IT IMPORTANT TO BE ACCURATE GOING BACK AND FORTH

12:43PM 9 WITH THE POTENTIAL COMPANY THAT RDV WAS GOING TO INVEST IN SO

12:43PM 10 YOU HAD A RECORD OF THE INVESTMENT AND THE DECISIONS?

12:44PM 11 A. YES.

12:44PM 12 MR. LEACH: YOUR HONOR, I OFFER EXHIBIT 5432.

12:44PM 13 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:44PM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:44PM 15 (GOVERNMENT'S EXHIBIT 5432 WAS RECEIVED IN EVIDENCE.)

12:44PM 16 BY MR. LEACH:

12:44PM 17 Q. LET'S START AT THE BOTTOM, MS. PETERSON.

12:44PM 18 DO YOU SEE THE FIRST EMAIL IN THIS CHAIN IS THE ONE THAT

12:44PM 19 WE SAW IN THE PRIOR EXHIBIT, 5809?

12:44PM 20 A. YES.

12:44PM 21 Q. AND THEN AS WE GO UP, IT APPEARS THAT MS. HOLMES WROTE,

12:44PM 22 "GOT IT. WE'RE VERY MUCH LOOKING FORWARD TO OUR MEETING.

12:44PM 23 "I'VE HAD OUR TEAM PREPARE MATERIALS FOR YOU -- LET US

12:44PM 24 KNOW THE BEST ADDRESS TO WHICH TO SEND THEM AND WE'LL GET THEM

12:44PM 25 OUT TO YOU."

12:44PM 1 DO YOU SEE THAT LANGUAGE?

12:44PM 2 A. YES.

12:44PM 3 Q. DO YOU KNOW WHAT SHE'S REFERRING TO BY MATERIALS THAT THE

12:44PM 4 TEAM PREPARED?

12:44PM 5 A. WE WERE SENT TWO LARGE BINDERS, DILIGENCE BINDERS FULL OF

12:44PM 6 INFORMATION.

12:44PM 7 Q. AND AT A HIGH LEVEL, WHAT WAS IN THOSE TWO BINDERS OF

12:44PM 8 DILIGENCE INFORMATION?

12:44PM 9 A. INFORMATION ABOUT THERANOS, ITS MISSION, A BIT OF ITS

12:45PM 10 HISTORY, AND PHARMACEUTICAL VERIFICATIONS OF THE -- THAT THE

12:45PM 11 EQUIPMENT WORKED, AND THEN A WHOLE LOT OF TESTING INFORMATION

12:45PM 12 THAT -- I'M NOT A SCIENTIST, SO THE SECOND BINDER WAS DIFFICULT

12:45PM 13 TO FOLLOW.

12:45PM 14 Q. OKAY. WE'LL GET BACK TO SOME OF THE DETAILS OF THAT.

12:45PM 15 BUT YOU BELIEVED THAT THE MATERIALS REFERRED TO IN THIS

12:45PM 16 EMAIL ARE THE DILIGENCE BINDERS THAT WERE PROVIDED TO YOU?

12:45PM 17 A. YES.

12:45PM 18 Q. OKAY. MS. HOLMES ALSO WROTE, "WE CAN ALSO BE AVAILABLE TO

12:45PM 19 SET UP A CALL TO CONNECT ON BACKGROUND AND ANY ASSOCIATED

12:45PM 20 FOLLOW UP BY PHONE IN ADVANCE OF OUR MEETING IF WE DON'T HAVE

12:45PM 21 THE CHANCE TO SEE YOU UNTIL YOU'RE OTHERWISE OUT HERE IN

12:45PM 22 OCTOBER."

12:45PM 23 DO YOU SEE THAT?

12:45PM 24 A. YES.

12:45PM 25 Q. AND DID YOU, IN FACT, PARTICIPATE IN A CALL WITH

12:45PM 1 MS. HOLMES AFTER THIS EMAIL EXCHANGE?

12:45PM 2 A. YES.

12:45PM 3 Q. UP AT THE TOP THERE'S A RESPONSE BY MR. TUBERGEN WHERE HE

12:46PM 4 SAYS, "IS THERE SOMEONE I MAY HAVE MY EA" -- IS THAT EXECUTIVE

12:46PM 5 ASSISTANT?

12:46PM 6 A. YES.

12:46PM 7 Q. -- "CONNECT WITH TO ARRANGE THE DETAILS OF OUR VISIT ON

12:46PM 8 THE 14TH?"

12:46PM 9 DO YOU SEE THAT?

12:46PM 10 A. YES.

12:46PM 11 Q. AND THE VISIT ON THE 14TH, WHAT DOES THAT REFER TO?

12:46PM 12 A. THAT WAS GOING TO BE OUR DILIGENCE MEETING, WHICH WAS

12:46PM 13 GOING TO BE US AND SUNNY AND ELIZABETH.

12:46PM 14 Q. OKAY. AND DID THAT MEETING END UP TAKING PLACE?

12:46PM 15 A. YES.

12:46PM 16 Q. WAS THAT OUT HERE IN CALIFORNIA?

12:46PM 17 A. YES.

12:46PM 18 Q. DID YOU PARTICIPATE IN THAT MEETING?

12:46PM 19 A. YES.

12:46PM 20 Q. DID MR. BALWANI PARTICIPATE IN THAT MEETING?

12:46PM 21 A. YES.

12:46PM 22 Q. DID MS. HOLMES PARTICIPATE?

12:46PM 23 A. YES.

12:46PM 24 Q. OKAY. AND IN ADDITION TO THAT MEETING IN OCTOBER, YOU HAD

12:46PM 25 A PHONE CALL WITH MS. HOLMES IN ADVANCE; IS THAT FAIR?

12:46PM 1 A. CORRECT.

12:46PM 2 Q. OKAY. LET'S LOOK AT EXHIBIT 2015.

12:47PM 3 DO YOU RECOGNIZE THIS?

12:47PM 4 A. YES.

12:47PM 5 Q. AND WHAT IS THIS?

12:47PM 6 A. THESE ARE THE NOTES THAT I TOOK DURING THE CALL THAT WE

12:47PM 7 HAD WITH ELIZABETH ON OCTOBER 3RD.

12:47PM 8 Q. OKAY. WHO PARTICIPATED IN THIS CALL?

12:47PM 9 A. JERRY TUBERGEN AND MYSELF AND ELIZABETH.

12:47PM 10 Q. MR. BALWANI WAS NOT PRESENT FOR THIS?

12:47PM 11 A. NOT THAT I KNOW OF.

12:47PM 12 Q. OKAY. AND WAS THIS PHONE CALL WITH MS. HOLMES PART OF

12:47PM 13 YOUR PROCESS IN TRYING TO OBTAIN INFORMATION ABOUT WHAT THE

12:47PM 14 COMPANY WAS ABOUT?

12:47PM 15 A. YES. TO OBTAIN SOME GENERAL INFORMATION, MORE MISSION

12:47PM 16 TYPE STUFF, AND ALSO TO SET UP THE DUE DILIGENCE MEETING THAT

12:47PM 17 WE WERE GOING TO HAVE LATER THAT MONTH.

12:47PM 18 Q. AND --

12:47PM 19 A. ALL OF THAT.

12:47PM 20 Q. AND -- DID YOU RELY ON THE STATEMENTS OF MS. HOLMES IN THE

12:47PM 21 COURSE OF MAKING A RECOMMENDATION TO INVEST IN THERANOS?

12:48PM 22 A. YES.

12:48PM 23 Q. OKAY. THESE ARE YOUR NOTES OF THE MEETING?

12:48PM 24 A. YES.

12:48PM 25 Q. DID YOU PREPARE THESE IN THE ORDINARY COURSE OF BUSINESS?

12:48PM 1 A. YES.

12:48PM 2 Q. DID YOU PREPARE THEM AT OR AROUND THE TIME OF THE PHONE

12:48PM 3 CALL?

12:48PM 4 A. YES.

12:48PM 5 Q. AND DID YOU PRESERVE THEM IN ORDER TO MAINTAIN A RECORD OF

12:48PM 6 WHAT RDV WAS INVESTING IN AND WHY?

12:48PM 7 A. YES.

12:48PM 8 THIS WAS PRESERVED, AS WELL AS A MUCH LONGER MEMO WAS MADE

12:48PM 9 AS WELL BECAUSE WE NEEDED TO COMMUNICATE THIS NOT JUST TO

12:48PM 10 MEMORIALIZE IT, BUT ALSO TO SEND IT TO THE FAMILY MEMBERS AS

12:48PM 11 WELL.

12:48PM 12 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

12:48PM 13 EXHIBIT 2015.

12:48PM 14 MR. COOPERSMITH: 802 OBJECTION, YOUR HONOR.

12:48PM 15 THE COURT: IS THIS COMING IN AS A BUSINESS RECORD?

12:48PM 16 MR. LEACH: YES, YOUR HONOR.

12:48PM 17 THE COURT: YES. IT WILL BE ADMITTED PURSUANT TO

12:48PM 18 803(6) AS A BUSINESS RECORD, AND IT MAY BE PUBLISHED.

12:48PM 19 (GOVERNMENT'S EXHIBIT 2015 WAS RECEIVED IN EVIDENCE.)

12:48PM 20 MR. LEACH: THANK YOU, YOUR HONOR.

12:48PM 21 MS. WACHS, IF WE CAN ZOOM IN ON THE TOP HALF OF THIS.

12:49PM 22 Q. DO YOU SEE AT THE TOP, MS. PETERSON, WHERE IT SAYS

12:49PM 23 "THERANOS CONF CALL NOTES"?

12:49PM 24 A. YES.

12:49PM 25 Q. AND THEN THERE'S A DATE AND THE NAME ELIZABETH HOLMES AND

12:49PM 1 TWO ACRONYMS. WHAT ARE THOSE ACRONYMS?

12:49PM 2 A. THAT'S JERRY'S INITIALS AND MY INITIALS.

12:49PM 3 Q. AND IS THEN SAYS, "WHAT IS THE LONG-TERM VISION OF

12:49PM 4 THERANOS?"

12:49PM 5 WAS THAT ONE OF THE TOPICS ON THE PHONE CALL ON THE 3RD?

12:49PM 6 A. YES, THOSE WERE OUR -- THE DARKENED STUFF WAS OUR

12:49PM 7 QUESTIONS THAT WE ASKED OF HER.

12:49PM 8 Q. YOU WROTE, "BUILD A PLATFORM FOR DECENTRALIZED HEALTH CARE

12:49PM 9 USING THERANOS'S INFRASTRUCTURE."

12:49PM 10 DO YOU SEE THAT?

12:49PM 11 A. YES.

12:49PM 12 Q. IS THAT SOMETHING THAT MS. HOLMES TOLD YOU?

12:49PM 13 A. YES.

12:49PM 14 Q. "START WITH LASER-FOCUS ON COMMERCIAL LAB MARKET, THEN

12:49PM 15 DIRECT TO CONSUMER MARKETS."

12:49PM 16 DO YOU SEE THAT LANGUAGE?

12:49PM 17 A. YES.

12:49PM 18 Q. AND THEN THERE'S A LINE FOR WALGREENS. DID THE TOPIC OF

12:49PM 19 WALGREENS COME UP IN THIS CONVERSATION WITH MS. HOLMES?

12:50PM 20 A. YES.

12:50PM 21 Q. WHAT DID SHE TELL YOU ABOUT WALGREENS?

12:50PM 22 A. SHE TOLD US THAT THEY HAD STARTED -- THEY HAD A CONTRACT

12:50PM 23 WITH THEM, THAT THEY WERE IN 40 STORES, AND THEY WERE GOING TO

12:50PM 24 BEGIN THEIR ROLLOUT AND IT WAS -- THEY HAD CONTRACTS WITH THEM

12:50PM 25 AND THAT THEY HAD JUST BOUGHT BOOTS IN EUROPE AT THE TIME,

12:50PM 1 WALGREENS HAD BOUGHT BOOTS, AND THAT THAT WAS GOING TO BE A
12:50PM 2 NICE SEGUE INTO GETTING INTO THE MORE GLOBAL MARKET.
12:50PM 3 Q. THERE'S A LINE FOR INSURANCE.
12:50PM 4 DO YOU SEE THAT?
12:50PM 5 A. YES.
12:50PM 6 Q. AND WHAT DID MS. HOLMES TELL YOU ABOUT INSURANCE?
12:50PM 7 A. THAT THIS WAS ANOTHER MARKET THAT DOES, THAT DOES BLOOD
12:50PM 8 TESTS, AND THAT WAS A MARKET THAT THEY WANTED TO TAP INTO.
12:50PM 9 Q. SAME QUESTIONS FOR HOSPITAL/DOC GROUPS.
12:50PM 10 WHAT DOES THAT REFER TO?
12:50PM 11 A. THAT THE HOSPITALS AND DOCTOR GROUPS PRESCRIBE TESTS TO
12:50PM 12 THEIR PATIENTS, AND THEY ALSO DO TESTS THAT SHE WANTED THAT
12:51PM 13 GROUP AS WELL.
12:51PM 14 Q. AND THERE'S A REFERENCE TO PHARMA.
12:51PM 15 DO YOU SEE THAT?
12:51PM 16 A. YES.
12:51PM 17 Q. DID MS. HOLMES TELL YOU THERANOS WAS DOING WORK WITH
12:51PM 18 PHARMACEUTICAL COMPANIES?
12:51PM 19 A. YES.
12:51PM 20 Q. OKAY. WHAT DID SHE SAY?
12:51PM 21 A. SHE SAID THAT THEY HAD BEEN DOING WORK FOR PHARMACEUTICAL
12:51PM 22 COMPANIES, TEN OF THE TOP PHARMACEUTICAL COMPANIES FOR THE LAST
12:51PM 23 NINE TO TEN YEARS.
12:51PM 24 Q. FURTHER BELOW -- IF WE CAN ZOOM OUT, MS. WACHS -- THERE'S
12:51PM 25 A LINE "WALGREENS.

12:51PM 1 "NATIONAL ROLLOUT.

12:51PM 2 "PROJECTIONS BASED ON 900 STORES."

12:51PM 3 DO YOU SEE THAT?

12:51PM 4 A. YES.

12:51PM 5 Q. AND WHAT DID THAT REFER TO?

12:51PM 6 A. WITHIN THE BINDER THERE WERE TWO PAGES OF FINANCIAL

12:51PM 7 INFORMATION, AND WE WANTED TO KNOW WHAT THE WALGREENS ROLLOUT

12:51PM 8 WAS GOING TO BE AND WHAT WAS THE BASIS FOR THOSE PROJECTIONS OR

12:52PM 9 THOSE FINANCIAL STATEMENTS FOR 2015.

12:52PM 10 AND SHE SAID THAT WAS BASED ON 900 STORES, A ROLLOUT GOING

12:52PM 11 FROM 40 TO 900.

12:52PM 12 Q. AND DURING THIS OCTOBER CALL, DID MS. HOLMES DESCRIBE FOR

12:52PM 13 YOU ANY ISSUES WITH THE WALGREENS ROLLOUT?

12:52PM 14 A. NO.

12:52PM 15 Q. DID SHE SAY ANYTHING TO THE EFFECT THAT WALGREENS WAS NOT

12:52PM 16 GOING TO EXPAND IN ADDITIONAL STORES UNTIL THERANOS COULD GET

12:52PM 17 ITS FINGERSTICK TESTING TO A LOWER PERCENTAGE?

12:52PM 18 A. NO.

12:52PM 19 MR. COOPERSMITH: OBJECTION. LACKS FOUNDATION.

12:52PM 20 MOVE TO STRIKE.

12:52PM 21 THE COURT: YOU'RE ASKING WHETHER SHE RECEIVED THIS

12:52PM 22 INFORMATION?

12:52PM 23 MR. LEACH: YES.

12:52PM 24 THE COURT: OVERRULED. THAT ANSWER CAN REMAIN.

12:52PM 25 BY MR. LEACH:

12:52PM 1 Q. FURTHER BELOW IT SAYS "RISKS."

12:52PM 2 DO YOU SEE THAT?

12:52PM 3 A. YES.

12:52PM 4 Q. AND THERE'S A LINE, "NOW HAVE LONG-TERM CONTRACTS, SO RISK

12:52PM 5 IS EXECUTION."

12:52PM 6 DO YOU SEE THAT?

12:52PM 7 A. YES.

12:52PM 8 Q. AND WHAT DID -- IS THAT SOMETHING THAT MS. HOLMES TOLD

12:52PM 9 YOU?

12:52PM 10 A. YES.

12:52PM 11 Q. AND WHAT DID YOU UNDERSTAND THAT TO MEAN, "RISK IS

12:53PM 12 EXECUTION"?

12:53PM 13 A. THAT THEY HAD CONTRACTS WITH -- THE TWO THAT WE TALKED

12:53PM 14 ABOUT THE MOST WAS SAFEWAY AND WALGREENS, AND THAT THE RISK TO

12:53PM 15 IT WAS THE ROLLOUT AND MAKING SURE THAT THEY HAD THE PEOPLE IN

12:53PM 16 PLACE AND THE RESOURCES TO ACTUALLY EXECUTE ON THE ROLLOUT

12:53PM 17 PLAN.

12:53PM 18 Q. IN THIS PHONE CALL, DID MS. HOLMES MENTION ANYTHING

12:53PM 19 RELATING TO TECHNOLOGY RISK?

12:53PM 20 A. NO.

12:53PM 21 Q. OKAY. YOU MENTIONED A MEMO THAT YOU PREPARED AFTER THIS

12:53PM 22 PHONE CALL.

12:53PM 23 DO YOU RECALL THAT TESTIMONY, MS. PETERSON?

12:53PM 24 A. YES.

12:53PM 25 Q. OKAY. LET ME ASK YOU TO PLEASE LOOK AT EXHIBIT 2073.

12:54PM 1 DO YOU RECOGNIZE THIS EMAIL?

12:54PM 2 A. YES.

12:54PM 3 Q. AND I'M ON -- IT SAYS PAGE 3 DOWN AT THE BOTTOM, BUT IT'S

12:54PM 4 ACTUALLY THE FIRST PAGE OF THE EXHIBIT.

12:54PM 5 DO YOU SEE THAT?

12:54PM 6 A. YES.

12:54PM 7 Q. AND WHAT IS THIS DOCUMENT?

12:54PM 8 A. THIS WAS AN EMAIL THAT I HAD SENT TO JERRY AND COPIED

12:54PM 9 MIKE LUNT, WHO WAS OUR IN-HOUSE COUNSEL AT THE TIME, JUST A

12:54PM 10 SUMMARY MEMO.

12:54PM 11 JERRY HAD ASKED FOR A SUMMARY NOT ONLY OF THE PHONE CALL,

12:54PM 12 BUT ALSO A SUMMARY OF THINGS THAT WERE IN THE BINDER, TO BEGIN

12:54PM 13 TO PREPARE FOR THE DILIGENCE MEETING THAT WE WERE GOING TO HAVE

12:54PM 14 IN CALIFORNIA.

12:54PM 15 Q. OKAY. IN ADVANCE OF THE PHONE CALL THAT YOU HAD WITH

12:54PM 16 MS. HOLMES, DID YOU RECEIVE THE TWO BINDERS OF DILIGENCE

12:54PM 17 DOCUMENTS?

12:54PM 18 A. YES.

12:54PM 19 Q. AND DID YOU REVIEW THOSE CAREFULLY?

12:54PM 20 A. YES.

12:54PM 21 Q. AND WHY DID YOU REVIEW THOSE CAREFULLY?

12:54PM 22 A. THAT'S MY JOB. YOU KNOW, TO BETTER UNDERSTAND EVERYTHING

12:55PM 23 THAT WE GOT, AND ALSO TO BEGIN TO FORM QUESTIONS TO ASK WHILE

12:55PM 24 WE WERE ON THE DILIGENCE RUN.

12:55PM 25 Q. AND THE MEMO THAT IS ATTACHED TO THE EMAIL IN

12:55PM 1 EXHIBIT 27-- 2073 BEGINNING ON PAGE 4, IS THIS SOMETHING THAT
12:55PM 2 YOU PREPARED?
12:55PM 3 A. YES.
12:55PM 4 Q. AND DID YOU PREPARE THIS IN THE ORDINARY COURSE OF
12:55PM 5 BUSINESS?
12:55PM 6 A. YES.
12:55PM 7 Q. AND DID YOU PREPARE THIS BASED ON THE DILIGENCE MATERIALS
12:55PM 8 THAT YOU HAD RECEIVED, THE PUBLIC INFORMATION THAT YOU HAD
12:55PM 9 REVIEWED, AND YOUR PHONE CONVERSATION WITH MS. HOLMES?
12:55PM 10 A. YES.
12:55PM 11 Q. AND WERE YOU TRYING TO BE AS ACCURATE AS POSSIBLE IN
12:55PM 12 SUMMARIZING THE INVESTMENT OPPORTUNITY?
12:55PM 13 A. YES.
12:55PM 14 Q. OKAY. AND WAS THIS PRESERVED IN THE ORDINARY COURSE OF
12:55PM 15 RDV'S BUSINESS?
12:55PM 16 A. YES.
12:55PM 17 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
12:55PM 18 EXHIBIT 2073.
12:55PM 19 MR. COOPERSMITH: YOUR HONOR, OBJECTION UNDER 802.
12:55PM 20 AND I'LL ALSO NOTE THAT THE DOCUMENT HAS MULTIPLE LAYERS
12:55PM 21 OF HEARSAY IN IT.
12:56PM 22 THE COURT: YOU'RE SPEAKING ABOUT THE MEMO ITSELF?
12:56PM 23 IS THAT WHAT YOU'RE TALKING ABOUT?
12:56PM 24 MR. COOPERSMITH: I'M TALKING ABOUT THE ATTACHMENT,
12:56PM 25 YOUR HONOR, YES.

12:56PM 1 THE COURT: RIGHT, RIGHT.

12:56PM 2 MR. LEACH.

12:56PM 3 MR. LEACH: YOUR HONOR, THIS IS A BUSINESS RECORD OF

12:56PM 4 RDV UNDER 803(6).

12:56PM 5 I'M ALSO OFFERING IT NOT FOR THE TRUTH, BUT ALSO AS THE

12:56PM 6 MEMORIALIZATION AS FOR THE REASONS OF WHY THEY INVESTED.

12:56PM 7 THE COURT: AND THIS IS THE MEMO DATED OCTOBER 3RD,

12:56PM 8 2014?

12:56PM 9 MR. LEACH: YES, YOUR HONOR.

12:56PM 10 THE COURT: ALL RIGHT. IT'S ADMITTED. THE

12:56PM 11 OBJECTION IS OVERRULED, AND IT'S ADMITTED UNDER 803(6).

12:56PM 12 (GOVERNMENT'S EXHIBIT 2073 WAS RECEIVED IN EVIDENCE.)

12:56PM 13 MR. LEACH: MAY I DISPLAY, YOUR HONOR?

12:56PM 14 THE COURT: YES.

12:56PM 15 MR. LEACH: THANK YOU.

12:56PM 16 IF WE CAN GO TO THE FIRST PAGE OF THE DOCUMENT, MS. WACHS.

12:56PM 17 EXCELLENT. AND IF WE CAN ZOOM IN AT THE TOP, PLEASE.

12:56PM 18 Q. MS. PETERSON, DO YOU SEE YOUR NAME IN THE FROM LINE?

12:57PM 19 A. YES.

12:57PM 20 Q. AND THE DATE OF THIS IS OCTOBER 12TH, 2014?

12:57PM 21 A. CORRECT.

12:57PM 22 Q. SO THAT'S AFTER YOUR PHONE CALL WITH MS. HOLMES?

12:57PM 23 A. YES.

12:57PM 24 Q. BUT BEFORE YOUR TRIP OUT TO CALIFORNIA?

12:57PM 25 A. YES.

12:57PM 1 Q. OKAY. YOU WROTE, "HEY, JERRY, HERE'S THE MEMO YOU WERE
12:57PM 2 LOOKING FOR THAT GOES A LITTLE FURTHER BEYOND JUST SUMMARIZING
12:57PM 3 THE CALL LAST WEEK WITH ELIZABETH. I ALSO TRIED TO INCORPORATE
12:57PM 4 A HIGH-LEVEL OVERVIEW OF THE KEY PARTS OF EVERYTHING I'VE READ
12:57PM 5 IN THE MATERIALS SHE SENT."
12:57PM 6 DO YOU SEE THAT LANGUAGE?
12:57PM 7 A. YES.
12:57PM 8 Q. THE MATERIALS SHE SENT, WAS THAT A REFERENCE TO THE DUE
12:57PM 9 DILIGENCE BINDERS?
12:57PM 10 A. YES.
12:57PM 11 Q. AND THOSE WERE PROVIDED UNDER THE CONFIDENTIALITY
12:57PM 12 AGREEMENT THAT MR. BALWANI EXECUTED?
12:57PM 13 A. CORRECT.
12:57PM 14 Q. AND YOU THEN WROTE, "I THINK IT GIVES YOU AND THE FAMILY
12:57PM 15 MEMBERS GOING ON THIS TRIP A SHORT BUT SOLID BASIS OF THE
12:57PM 16 COMPANY, ITS OBJECTIVES, ITS HISTORY, ITS ADVANTAGES, ITS
12:57PM 17 SKEPTIC'S VIEWS, ET CETERA, AND ENOUGH OF A VIEW TO HAVE AN
12:58PM 18 ENGAGED AND PRODUCTIVE MEETING ON TUESDAY WITHOUT HAVING TO
12:58PM 19 READ THROUGH THE FOOT OF MATERIALS SHE SENT."
12:58PM 20 DO YOU SEE THAT?
12:58PM 21 A. YES.
12:58PM 22 Q. AND IS THAT A FAIR SUMMARY OF YOUR MEMO?
12:58PM 23 A. YES.
12:58PM 24 Q. AND LET'S GO TO THE PAGE -- THE NEXT PAGE.
12:58PM 25 LET'S ZOOM IN ON THE FIRST HALF IF WE COULD, MS. WACHS.

12:58PM 1 DO YOU SEE IN THE TO LINE IT'S FROM YOU AND AN INDIVIDUAL
12:58PM 2 NAMED MICHAEL LUNT?
12:58PM 3 A. YES.
12:58PM 4 Q. AND THERE'S A TO LINE FROM JERRY TUBERGEN AND A FROM LINE
12:58PM 5 FROM YOU AND MICHAEL LUNT.
12:58PM 6 WHO WAS MICHAEL LUNT?
12:58PM 7 A. HE WAS OUR IN-HOUSE COUNSEL AT THE TIME.
12:58PM 8 Q. YOU THEN WRITE, "RECAP OF CONVERSATIONS WITH
12:58PM 9 ELIZABETH HOLMES AND EXCERPTS FROM WRITTEN MATERIALS PROVIDED
12:58PM 10 TO RDV ON THE COMPANY."
12:58PM 11 DO YOU SEE THAT LANGUAGE?
12:58PM 12 A. YES.
12:58PM 13 Q. AND YOU THEN WROTE, "WHAT IS THERANOS TODAY?
12:58PM 14 "INSTEAD OF VIALS OF BLOOD (ONE FOR EVERY TEST NEEDED)
12:59PM 15 THERANOS REQUIRES ONLY A PINPRICK AND A DROP OF BLOOD TO
12:59PM 16 PERFORM HUNDREDS OF TESTS, FROM STANDARD CHOLESTEROL CHECKS TO
12:59PM 17 SOPHISTICATED GENETIC ANALYSES."
12:59PM 18 DO YOU SEE THAT LANGUAGE?
12:59PM 19 A. YES.
12:59PM 20 Q. WHERE DID YOU GET THAT INFORMATION?
12:59PM 21 A. SHE HAD SAID THAT MANY TIMES IN DESCRIBING WHAT THERANOS
12:59PM 22 IS.
12:59PM 23 IT'S ALSO SUMMARIZED IN SOME OF THE OTHER MATERIALS THAT
12:59PM 24 WE READ, BUT WE HEARD THIS FROM HER MANY TIMES.
12:59PM 25 Q. AND WAS THAT RELEVANT TO RDV'S INVESTMENT DECISION?

12:59PM 1 A. YES.

12:59PM 2 Q. AND HOW SO?

12:59PM 3 A. THAT YOU COULD DO THAT WITH A -- THAT THE MACHINE COULD DO

12:59PM 4 THAT WITH A PINPRICK AND IT COULD PERFORM HUNDREDS OF TESTS.

12:59PM 5 Q. IT THEN GOES ON TO SAY, "THE RESULTS ARE FASTER (COUPLE

12:59PM 6 HOURS), MORE ACCURATE (100 PERCENT AUTOMATED, NO MANUAL

12:59PM 7 HANDLING OF THE SAMPLE), AND FAR CHEAPER THAN CONVENTIONAL

12:59PM 8 METHODS."

12:59PM 9 DO YOU SEE THAT LANGUAGE?

12:59PM 10 A. YES.

12:59PM 11 Q. AND WHERE DID YOU GET THAT INFORMATION?

01:00PM 12 A. THAT CAME FROM HER AS WELL, AND I'M SURE IT'S PROBABLY IN

01:00PM 13 THE MATERIALS AS WELL.

01:00PM 14 Q. WAS THAT INFORMATION RELEVANT TO RDV'S INVESTMENT

01:00PM 15 DECISION?

01:00PM 16 A. YES.

01:00PM 17 Q. WHY?

01:00PM 18 A. WE REALLY THOUGHT, IF IT DID ALL OF THIS, IT WAS GOING TO

01:00PM 19 CHANGE HEALTH CARE. IT WAS VERY TRANSFORMATIVE AND IT WAS

01:00PM 20 CHEAPER.

01:00PM 21 Q. LET'S LOOK AT PAGE 2, PLEASE, OR 2 OF THE MEMO, PAGE 5 OF

01:00PM 22 THE EXHIBIT.

01:00PM 23 THERE'S A PARAGRAPH TITLED "DESCRIBE THE WALGREENS

01:00PM 24 OPPORTUNITY."

01:00PM 25 DO YOU SEE THAT?

01:00PM 1 A. YES.

01:00PM 2 Q. AND WAS THAT A QUESTION THAT YOU POSED TO MS. HOLMES AT

01:00PM 3 SOME POINT?

01:00PM 4 A. YES. THIS WAS FROM THE PHONE CALL.

01:00PM 5 Q. OKAY. AND I WANT TO DRAW YOUR ATTENTION TO THE MIDDLE OF

01:00PM 6 THE PARAGRAPH. THERE'S A LINE THAT SAYS, "THERANOS'S REVENUE

01:00PM 7 FOR 2015 IS PROJECTED TO BE \$990 MILLIN AND ASSUMES THEY OPEN

01:01PM 8 900 WALGREENS-THERANOS CENTERS NEXT YEAR."

01:01PM 9 DO YOU SEE THAT LANGUAGE?

01:01PM 10 A. YES.

01:01PM 11 Q. WAS THAT INFORMATION IMPORTANT TO RDV'S INVESTMENT

01:01PM 12 DECISION?

01:01PM 13 A. EXTREMELY IMPORTANT, YES.

01:01PM 14 Q. WHY IS THAT?

01:01PM 15 A. BECAUSE IT SHOWED THAT THE REVENUE BEING PRESENTED IN 2015

01:01PM 16 WAS FULLY SUPPORTED BY CONTRACTS WITH WALGREENS THAT INCLUDED

01:01PM 17 THIS ROLLOUT, WHICH WE DID READ WITHIN THE WALGREENS 10-K THAT

01:01PM 18 THEY WERE MOVING FORWARD WITH THAT A YEAR -- I THINK IT WAS THE

01:01PM 19 2013 10-K.

01:01PM 20 SO WE DIDN'T HEAR ANYTHING CONTRARY TO THAT FROM

01:01PM 21 ELIZABETH HOLMES OR SUNNY.

01:01PM 22 Q. AND THERE WAS A REFERENCE TO -- AND WHERE DID THIS

01:01PM 23 INFORMATION COME FROM, THE \$990 MILLION AND THE 900 --

01:02PM 24 A. THAT CAME FROM ELIZABETH WHEN WE WERE SPEAKING TO HER, AS

01:02PM 25 WELL AS THE FINANCIALS WERE IN THE BINDER.

01:02PM 1 Q. THE DUE DILIGENCE MATERIALS THAT WERE PROVIDED TO YOU?

01:02PM 2 A. YES.

01:02PM 3 Q. OKAY. IF WE COULD GO FURTHER DOWN, MS. WACHS.

01:02PM 4 DO YOU SEE THE BOLD HEADLINE, "WHAT ARE THE MAIN RISKS

01:02PM 5 THAT THERANOS FACES?"

01:02PM 6 A. YES.

01:02PM 7 Q. AND YOU WROTE, "HOLMES BELIEVES THE COMPANY'S PRIMARY RISK

01:02PM 8 IS THE EXECUTION OF ITS BUSINESS PLAN, RATHER THAN TECHNOLOGY,

01:02PM 9 VALIDATION, AND CUSTOMER ACCEPTANCE."

01:02PM 10 DO YOU SEE THAT LANGUAGE?

01:02PM 11 A. YES.

01:02PM 12 Q. AND WAS THAT IMPORTANT TO RDV'S INVESTMENT DECISION?

01:02PM 13 A. VERY.

01:02PM 14 Q. OKAY. AND WHERE DID YOU GET THIS INFORMATION?

01:02PM 15 A. THIS CAME DIRECTLY FROM HER IN OUR PHONE CONVERSATION.

01:02PM 16 Q. OKAY. AND WHY WAS THIS RELEVANT TO YOU?

01:02PM 17 A. BECAUSE IT SHOWED THAT IT HAS BEEN DOING TESTS FOR YEARS

01:02PM 18 AND WAS VALIDATED BY PHARMACEUTICAL COMPANIES.

01:02PM 19 Q. IT GOES ON TO SAY, "SINCE 2005 THERANOS'S CLIENTS INCLUDED

01:03PM 20 10 OF THE TOP 15 PHARMACEUTICAL COMPANIES AS THEY CONDUCTED

01:03PM 21 CLINICAL TRIALS."

01:03PM 22 DO YOU SEE THAT LANGUAGE?

01:03PM 23 A. YES.

01:03PM 24 Q. AND WHERE DID YOU GET THAT INFORMATION?

01:03PM 25 A. FROM ELIZABETH.

01:03PM 1 Q. AND WAS THAT RELEVANT TO YOU?

01:03PM 2 A. VERY, YES.

01:03PM 3 Q. WHY?

01:03PM 4 A. BECAUSE IT SHOWED THAT -- AGAIN, IT VALIDATED THE SCIENCE

01:03PM 5 AND THAT IT WORKED AND IT HAD BEEN WORKING FOR MANY YEARS WITH

01:03PM 6 PHARMACEUTICAL COMPANIES.

01:03PM 7 Q. FURTHER ON IT SAYS, "THROUGH THIS WORK, THERANOS HAS BEEN

01:03PM 8 COMPREHENSIVELY VALIDATED OVER THE LAST 9 YEARS BY THE 10

01:03PM 9 LARGEST PHARMACEUTICAL COMPANIES."

01:03PM 10 IS THAT CONSISTENT WITH STATEMENTS THAT MS. HOLMES MADE TO

01:03PM 11 YOU?

01:03PM 12 A. YES.

01:03PM 13 Q. OKAY. IF WE COULD ZOOM FURTHER DOWN, THERE'S A HEADING

01:03PM 14 "WHAT ARE THERANOS'S KEY OBJECTIVES FOR THE MEETING ON

01:03PM 15 OCTOBER 14TH?"

01:03PM 16 DO YOU SEE THAT PARAGRAPH?

01:04PM 17 A. YES.

01:04PM 18 Q. OKAY. AND THE MEETING ON OCTOBER 14TH, IS THAT A

01:04PM 19 REFERENCE TO A MEETING BETWEEN RDV AND THERANOS?

01:04PM 20 A. YES.

01:04PM 21 Q. AND DID YOU ATTEND THAT MEETING?

01:04PM 22 A. YES.

01:04PM 23 Q. AND THAT'S THE MEETING OUT HERE IN PALO ALTO?

01:04PM 24 A. YES.

01:04PM 25 Q. YOU WROTE, "HOLMES IS SEEKING INVESTORS WHO WANT TO BUILD

01:04PM 1 A GREAT COMPANY THAT WILL BOTH 'DO WELL AND DO GOOD' OVER THE
01:04PM 2 COURSE OF MULTIPLE GENERATIONS.

01:04PM 3 "THUS, HOLMES AND THE THERANOS TEAM WANT TO GET TO KNOW
01:04PM 4 THE PEOPLE MAKING THE INVESTMENT, UNDERSTANDING THEIR
01:04PM 5 INVESTMENT PHILOSOPHY AND TARGET INVESTMENT PROFILE AS WELL AS
01:04PM 6 MEET IN PERSON THOSE WHO WILL BE INTERACTING WITH THE COMPANY
01:04PM 7 ON A GO-FORWARD BASIS."

01:04PM 8 DO YOU SEE THAT LANGUAGE?

01:04PM 9 A. YES.

01:04PM 10 Q. AND WHAT WERE YOU GETTING AT THERE?

01:04PM 11 A. I WAS TRYING TO CONVEY TO THE FAMILY MEMBERS THAT WERE
01:04PM 12 GOING TO GO ON THIS TRIP WHAT THE -- PART OF THE AGENDA FOR THE
01:04PM 13 MEETING WAS TO GET TO KNOW EACH OTHER.

01:04PM 14 SHE MADE IT CLEAR THAT THEY WANTED TO HAND PICK FIVE TO
01:04PM 15 EIGHT FAMILY INVESTORS BECAUSE THE TRADITIONAL INVESTORS OF,
01:05PM 16 I'LL CALL IT VENTURE FIRMS OR OTHER INSTITUTIONAL MONEY, KIND
01:05PM 17 OF HAD A TIMEFRAME ON THEY WANTED THEIR MONEY BACK.

01:05PM 18 SO SHE WAS LOOKING FOR FAMILY INVESTORS THAT COULD -- THAT
01:05PM 19 WERE SEEKING THIS MORE LONG-TERM, DO GOOD TRANSFORM HEALTH CARE
01:05PM 20 TYPE OF INVESTORS.

01:05PM 21 SO WE WANTED -- I WANTED TO MAKE SURE THAT THE FAMILY
01:05PM 22 UNDERSTOOD WHAT SHE WAS LOOKING FOR, YOU KNOW, AS WE WENT OUT
01:05PM 23 THERE.

01:05PM 24 Q. WHEN YOU SAY "HAND PICKED," WAS THERE -- DID YOU FEEL AT
01:05PM 25 THE TIME THAT YOU WERE BEING PICKED AS MUCH AS YOU WERE PICKING

01:05PM 1 THERANOS?

01:05PM 2 A. YES.

01:05PM 3 MR. COOPERSMITH: OBJECTION. LEADING.

01:05PM 4 THE COURT: OVERRULED. THE ANSWER CAN REMAIN.

01:05PM 5 BY MR. LEACH:

01:05PM 6 Q. CAN YOU EXPLAIN THAT?

01:05PM 7 A. YES. IT WAS PRETTY CLEAR TO US -- I THINK IT'S EVEN IN

01:05PM 8 THE LETTER THAT SHE HAD WRITTEN TO US IN THE FRONT OF THE

01:06PM 9 BINDERS -- THAT SHE WAS -- SHE DESIRED TO HAVE FIVE TO EIGHT

01:06PM 10 INVESTORS, FAMILY TYPE INVESTORS.

01:06PM 11 SO, YES, WE DID FEEL AS THOUGH -- THAT'S A SMALL NUMBER OF

01:06PM 12 PEOPLE, SO WE FELT, WHEN WE WENT OUT THERE, THAT WE WANTED TO

01:06PM 13 MAKE SURE THAT SHE UNDERSTOOD OUR BELIEFS AND INVESTMENT

01:06PM 14 PHILOSOPHIES AS MUCH AS WE UNDERSTOOD THEIRS.

01:06PM 15 Q. DID THAT INFLUENCE IN ANY WAY HOW YOU WENT ABOUT YOUR

01:06PM 16 WORK?

01:06PM 17 A. NOT ME PARTICULARLY.

01:06PM 18 BUT I THINK IT'S IMPORTANT FOR THE FAMILY, AND FOR JERRY,

01:06PM 19 THAT WE INVEST IN THINGS THAT SHARE THE SAME COMMON BELIEFS AND

01:06PM 20 VISION FOR THINGS SUCH AS HEALTH CARE AND EDUCATION.

01:06PM 21 Q. LET'S LOOK AT THE NEXT PAGE OF THIS DOCUMENT.

01:06PM 22 DO YOU SEE UP AT THE TOP THE HEADING "APPENDIX --

01:07PM 23 STATISTICS AND NOTEWORTHY ITEMS"?

01:07PM 24 A. YES.

01:07PM 25 Q. AND THEN THERE'S A NUMBER OF BULLETS.

01:07PM 1 WHY WERE YOU INCLUDING THIS INFORMATION IN YOUR MEMO?

01:07PM 2 A. THIS WAS JUST A NUMBER OF THINGS THAT I HAD TAKEN FROM THE

01:07PM 3 BINDERS AND THINGS THAT I HAD READ, A NUMBER -- THEY HAD

01:07PM 4 REFERENCED A NUMBER OF ARTICLES TO READ IN THE BINDER, AND A

01:07PM 5 LOT OF THIS STUFF WAS PULLED FROM THERE.

01:07PM 6 I JUST WANTED THE FAMILY TO HAVE A FULL -- THE DEVOSES

01:07PM 7 THAT WENT ON THE TRIP TO HAVE A FULL UNDERSTANDING OF

01:07PM 8 EVERYTHING THAT I HAD READ.

01:07PM 9 Q. DID YOU BELIEVE THAT THIS INFORMATION WAS RELEVANT TO AN

01:07PM 10 INVESTMENT DECISION?

01:07PM 11 A. VERY, YES.

01:07PM 12 Q. OKAY. IN THE THIRD BULLET IT SAYS, "THE PRE- AND

01:07PM 13 POST-ANALYTICAL PHASES OF THE LAB TESTING PROCESS (HUMAN

01:07PM 14 INTERACTION PARTS) ACCOUNT FOR 93 PERCENT OF ERRORS. THERANOS

01:07PM 15 AUTOMATES THE PRE- AND POST-ANALYTIC PROCESSES (NO MANUAL

01:08PM 16 HANDLING OF THE SAMPLE), DRASTICALLY MINIMIZING THE HUMAN

01:08PM 17 ELEMENTS OF PROCESSING WHICH IS PROVEN TO CAUSE OF THE MAJORITY

01:08PM 18 OF LAB TEST ERRORS."

01:08PM 19 DO YOU SEE THAT LANGUAGE?

01:08PM 20 A. YES.

01:08PM 21 Q. AND WHERE DID YOU GET THAT INFORMATION?

01:08PM 22 A. THAT COULD HAVE BEEN WRITTEN SOMEWHERE, TOO, BUT I DO

01:08PM 23 RECALL HER TALKING ABOUT THAT AT LENGTH.

01:08PM 24 Q. AND WAS THIS IMPORTANT TO YOU?

01:08PM 25 A. YES.

01:08PM 1 Q. DOWN TOWARDS THE BOTTOM THERE'S A BULLET, "THERANOS USES
01:08PM 2 THEIR OWN ANALYZER EQUIPMENT."

01:08PM 3 DO YOU SEE THAT LANGUAGE?

01:08PM 4 A. YES.

01:08PM 5 Q. AND WAS THAT YOUR UNDERSTANDING?

01:08PM 6 A. YES.

01:08PM 7 Q. WAS THAT IMPORTANT TO YOU?

01:08PM 8 A. YES.

01:08PM 9 Q. WHY?

01:08PM 10 A. WE DID HAVE A DISCUSSION AROUND THE -- WHY IT DIDN'T HAVE
01:08PM 11 TO BE FDA APPROVED, AND THIS WAS KIND OF THE ANSWER THAT THEY
01:08PM 12 HAD GIVEN, THAT THEY USED THEIR OWN ANALYZER EQUIPMENT, THEY
01:08PM 13 DON'T SELL THEM.

01:08PM 14 SO, YEAH, IT WAS IMPORTANT FOR US TO UNDERSTAND AS MUCH AS
01:09PM 15 WE COULD HOW THEY DO WHAT THEY DO.

01:09PM 16 Q. OKAY. WAS IT IMPRESSIVE TO YOU THAT THERANOS USES ITS OWN
01:09PM 17 ANALYZER EQUIPMENT?

01:09PM 18 A. YES, IT WAS IMPRESSIVE THAT IT WORKED.

01:09PM 19 Q. OKAY. AND WHERE DID YOU GET THIS INFORMATION, "THERANOS
01:09PM 20 USES THEIR OWN ANALYZER EQUIPMENT"?

01:09PM 21 A. THAT WAS MENTIONED MANY TIMES THROUGH THE COURSE OF OUR
01:09PM 22 DILIGENCE, AND I'M SURE IT'S IN THE MATERIALS AS WELL.

01:09PM 23 Q. OKAY. WHEN YOU SAY IT WAS MENTIONED MANY TIMES, DO YOU
01:09PM 24 MEAN THE PHONE CALL WITH MS. HOLMES?

01:09PM 25 A. YES, YES. AND IT WAS SAID AGAIN AT THE MEETING.

01:09PM 1 Q. THE MEETING OUT IN CALIFORNIA?

01:09PM 2 A. YES.

01:09PM 3 Q. OKAY. IN THE NEXT -- AT ANY POINT IN TIME DID MS. HOLMES

01:09PM 4 OR MR. BALWANI TELL YOU THAT THERANOS USED EQUIPMENT

01:09PM 5 MANUFACTURED BY OTHERS?

01:09PM 6 A. NO.

01:09PM 7 Q. OKAY. AT ANY POINT IN TIME DID THEY TELL YOU THAT THEY

01:09PM 8 WERE MODIFYING DEVICES MADE BY SIEMENS TO DO BLOOD TESTING?

01:10PM 9 A. NO.

01:10PM 10 Q. WOULD THAT HAVE BEEN RELEVANT TO YOU?

01:10PM 11 A. YES.

01:10PM 12 Q. WHY?

01:10PM 13 A. BECAUSE, AGAIN, WE NEEDED TO KNOW HOW THEY WERE DOING

01:10PM 14 THINGS, AND THEY TOLD US THAT EVERYTHING WAS BEING DONE ON

01:10PM 15 THEIR OWN ANALYZER EQUIPMENT AND THAT IT WORKED AND IT WAS

01:10PM 16 VALIDATED BY PHARMACEUTICAL COMPANIES. THAT WAS VERY

01:10PM 17 IMPORTANT.

01:10PM 18 Q. IN THE NEXT BULLET IT READS, "A THERANOS ANALYZER STATION

01:10PM 19 IS A SMALL FRACTION OF THE SIZE OF A CURRENT LAB MAKING IT

01:10PM 20 POSSIBLE TO PLACE A THERANOS LAB IN THE OPERATING ROOM OR IN A

01:10PM 21 MILITARY EVACUATION HELICOPTER," AND THEN IT CONTINUES.

01:10PM 22 DO YOU SEE THAT?

01:10PM 23 A. YES.

01:10PM 24 Q. WHERE DID YOU GET THIS INFORMATION?

01:10PM 25 A. THAT MAY BE FROM ONE OF THE ARTICLES THAT I HAD READ, BUT

01:10PM 1 WE ALSO TALKED ABOUT THAT AGAIN, HER WORK WITH THE -- THEIR
01:10PM 2 WORK WITH THE DOD, THE DEPARTMENT OF DEFENSE, WHEN WE WERE AT
01:11PM 3 THE MEETING.

01:11PM 4 Q. THE MEETING IN CALIFORNIA?

01:11PM 5 A. YES.

01:11PM 6 Q. AND WHAT WAS SAID THERE?

01:11PM 7 A. THAT -- PRETTY MUCH THAT, THAT THEY WERE DOING A LOT OF
01:11PM 8 WORK FOR THE DEPARTMENT OF DEFENSE, AND THAT IT WAS ON MILITARY
01:11PM 9 HELICOPTERS.

01:11PM 10 THEY WERE ALSO WORKING ON EBOLA. AT THE TIME I RECALL
01:11PM 11 TALKING A LOT ABOUT THAT THEY WERE TRYING TO WORK WITH THE DOD
01:11PM 12 ON HOW THEY COULD APPROACH THE EBOLA SCARE AT THE TIME.

01:11PM 13 Q. THIS SAYS, "A THERANOS ANALYZER STATION IS A SMALL
01:11PM 14 FRACTION OF THE SIZE OF A CURRENT LAB."

01:11PM 15 WAS THAT IMPRESSIVE TO YOU?

01:11PM 16 A. YES.

01:11PM 17 Q. AND WAS IT RELEVANT TO THE INVESTMENT DECISION?

01:11PM 18 A. YES. BECAUSE OF THE SIZE, IT WAS POSSIBLE TO PUT THESE
01:11PM 19 THINGS -- SHE KEPT SAYING THAT SHE WANTED TO PUT AN ANALYZER
01:11PM 20 WITHIN, YOU KNOW, FIVE MILES OF EVERY HUMAN OR CONSUMER.

01:11PM 21 AND GIVEN THE SIZE OF IT, YOU COULD THEORETICALLY PUT IT
01:11PM 22 IN PEOPLE'S HOMES EVENTUALLY.

01:11PM 23 Q. LET ME DRAW YOUR ATTENTION TO THE NEXT BULLET.

01:12PM 24 ROUGHLY HALFWAY THROUGH IT READS, "UNLIKE MOST LABS,
01:12PM 25 THERANOS DOES NOT BUY ANALYZER EQUIPMENT FROM A 3RD PARTY, AND

01:12PM 1 THEY DO NOT SELL THEIR ANALYZERS TO OTHER LABS."

01:12PM 2 DO YOU SEE THAT?

01:12PM 3 A. YES.

01:12PM 4 Q. WAS THAT A TOPIC THAT WAS DISCUSSED IN THE OCTOBER -- IN

01:12PM 5 THE MEETING IN PALO ALTO?

01:12PM 6 A. YES.

01:12PM 7 Q. AND WAS THIS RELEVANT TO YOU?

01:12PM 8 A. YES.

01:12PM 9 Q. THANK YOU, MS. WACHS. WE CAN TAKE THAT DOWN.

01:12PM 10 I'D LIKE TO FOCUS ON THE MEETING YOU'VE BEEN MENTIONING

01:12PM 11 OUT IN PALO ALTO.

01:12PM 12 WHO WENT TO -- YOU DON'T WORK IN PALO ALTO, DO YOU?

01:12PM 13 A. NO.

01:12PM 14 Q. WHERE DO YOU WORK?

01:12PM 15 A. IN GRAND RAPIDS, MICHIGAN.

01:13PM 16 Q. OKAY. SO YOU FLEW OUT TO CALIFORNIA IN OCTOBER OF 2014?

01:13PM 17 A. CORRECT.

01:13PM 18 Q. AND WHO WAS WITH YOU?

01:13PM 19 A. DOUG DEVOS, WHICH WAS THE CHAIRMAN OF OUR INVESTMENT

01:13PM 20 COMMITTEE AT THE TIME; JERRY TUBERGEN; MYSELF; RICK DEVOS, WHO

01:13PM 21 REPRESENTED DICK AND BETSY'S FAMILY; AND CHERI DEVOS, WHO IS

01:13PM 22 ONE OF THE OTHER CHILDREN, SECOND GENERATION CHILDREN.

01:13PM 23 Q. AND WHO FROM THERANOS DID YOU MEET WITH?

01:13PM 24 A. SUNNY BALWANI AND ELIZABETH HOLMES.

01:13PM 25 Q. HOW LONG DID THE MEETING LAST?

01:13PM 1 A. IT WAS A GOOD FOUR TO FOUR AND A HALF HOURS, WHICH
01:13PM 2 INCLUDED A TOUR, WHICH WAS ABOUT, I DON'T KNOW, 45 MINUTES TO
01:13PM 3 AN HOUR.
01:13PM 4 Q. AND WHEN YOU SAY "A TOUR," WHAT DID YOU TOUR?
01:13PM 5 A. WE TOURED THE LOCATION, THIS WAS DONE LAST, AND SAW THE
01:13PM 6 ANALYZER EQUIPMENT, AND THEN CHERI -- WE SAW THE WELLNESS ROOM
01:13PM 7 THAT THEY HAD IN THE BUILDING, WHICH WAS EXPLAINED TO US THAT
01:14PM 8 THIS WAS PRETTY MUCH THE SETUP THAT THEY HAD AT WALGREENS, AND
01:14PM 9 CHERI HAD HER BLOOD TESTED.
01:14PM 10 SO IT WAS KIND OF AN EXPERIENCE OF WHAT YOU WOULD HAVE
01:14PM 11 GOTTEN IF YOU HAD GONE TO WALGREENS.
01:14PM 12 Q. AND WHEN YOU SAY "CHERI HAD HER BLOOD TESTED," WHAT DID
01:14PM 13 YOU OBSERVE?
01:14PM 14 A. THAT SHE WENT IN AND HAD HER FINGERSTICK BLOOD TESTED.
01:14PM 15 AND THEN THEY DIDN'T SHOW US, YOU KNOW, RUNNING IT THROUGH
01:14PM 16 THE ANALYZER. THEY JUST SAID THEY WOULD GET HER BACK HER TEST
01:14PM 17 RESULTS.
01:14PM 18 Q. DID THEY SHOW YOU ANY DEVICES MANUFACTURED BY THIRD
01:14PM 19 PARTIES?
01:14PM 20 A. NONE, NO.
01:14PM 21 Q. AND DID THEY SHOW YOU ANY SIEMENS ANALYZERS?
01:14PM 22 A. NO.
01:14PM 23 Q. AND THE DEVICE THAT YOU WERE SHOWN, DESCRIBE IT FOR US.
01:14PM 24 WHAT DID YOU SEE?
01:14PM 25 A. IT WAS ABOUT, I DON'T KNOW, A FOOT AND A HALF TALL, LIKE A

01:14PM 1 COMPUTER CPU UNIT, IT LOOKED LIKE THAT.

01:14PM 2 Q. AND DID YOU BELIEVE THAT WAS THE DEVICE THAT THERANOS WAS

01:15PM 3 USING FOR ITS TESTING?

01:15PM 4 A. YES. IT WAS VERY CLEAR THAT THAT'S WHAT THEY WERE USING.

01:15PM 5 Q. WHY DO YOU SAY THAT?

01:15PM 6 A. IT WAS REPEATEDLY SAID THAT THIS IS HOW THEY DID THINGS.

01:15PM 7 Q. OKAY. I WANT TO -- SO THE MEETING AS A WHOLE WAS ABOUT

01:15PM 8 FOUR AND A HALF HOURS?

01:15PM 9 A. ROUGHLY, YEAH.

01:15PM 10 Q. AND WAS MR. BALWANI PRESENT FOR ALL OF THE MEETING?

01:15PM 11 A. HE WAS PRESENT FOR EVERYTHING IN THE ROOM WHERE WE WERE

01:15PM 12 DISCUSSING EVERYTHING.

01:15PM 13 HE DID NOT GO ON THE TOUR.

01:15PM 14 Q. OKAY. AND DESCRIBE THE SUBSTANCE OF THE MEETING. WHAT

01:15PM 15 WAS SAID?

01:15PM 16 A. WE SPENT A LOT OF TIME REALLY GOING OVER, FOR THE THREE

01:15PM 17 FAMILY MEMBERS THAT WERE PRESENT, A LOT OF THE MISSION AND HOW

01:15PM 18 IT DOES WHAT IT DOES, THE CONTRACTS.

01:15PM 19 WE SPENT A FAIR AMOUNT OF TIME ON THE FINANCIALS AND WHAT

01:15PM 20 MADE UP THOSE FINANCIALS, WHICH LED TO CONVERSATIONS AROUND THE

01:15PM 21 PHARMACEUTICAL COMPANIES THAT THEY HAD WORKED WITH AND JUST THE

01:16PM 22 MISSION OF WHERE SHE WANTED TO GO.

01:16PM 23 OUR SIDE OF THE TABLE TALKED A LOT ABOUT HEALTH CARE AND

01:16PM 24 THAT THEY HAVE A PASSION, THIS DEVOS FAMILY HAS A PASSION FOR

01:16PM 25 HEALTH CARE.

01:16PM 1 DOUG WAS THE CEO OF AMWAY AT THE TIME, AND THEY TALKED A
01:16PM 2 LOT ABOUT POTENTIAL WAYS THAT AMWAY COULD HELP THERANOS GO
01:16PM 3 GLOBAL.
01:16PM 4 SO THERE WAS A LOT OF BACK AND FORTH AROUND, YOU KNOW, THE
01:16PM 5 BASIS OF THE COMPANY, WHAT SHE WANTED TO DO WITH IT, THE
01:16PM 6 FINANCIALS, AND THEN POTENTIALLY HOW WE COULD HELP.
01:16PM 7 Q. YOU TALKED EARLIER ABOUT THE TWO BINDERS OF DUE DILIGENCE
01:16PM 8 MATERIALS THAT YOU RECEIVED.
01:16PM 9 DID YOU BRING THOSE WITH YOU?
01:16PM 10 A. I DID, YEAH.
01:16PM 11 Q. AND DID YOU ASK QUESTIONS OF MS. HOLMES AND MR. BALWANI
01:16PM 12 BASED ON THOSE DUE DILIGENCE MATERIALS?
01:16PM 13 A. THERE WERE QUESTIONS ASKED, YES, BY OUR SIDE OF THE TABLE.
01:16PM 14 Q. OKAY. LET ME DRAW YOUR ATTENTION TO WHAT WE'VE MARKED AS
01:17PM 15 EXHIBIT 4858.
01:17PM 16 4858 IS ABOUT 187 PAGES.
01:17PM 17 DO YOU SEE THAT?
01:17PM 18 A. YES.
01:17PM 19 Q. OKAY. ARE YOU FAMILIAR WITH THIS DOCUMENT?
01:17PM 20 A. YES.
01:17PM 21 Q. AND WHAT IS IT?
01:17PM 22 A. THIS WAS THE FIRST BINDER THAT WAS SENT TO US AS PART OF
01:17PM 23 THE DUE DILIGENCE MATERIALS.
01:17PM 24 Q. OKAY. AND DID YOU RELY ON THE STATEMENTS IN EXHIBIT 4858
01:17PM 25 IN THE COURSE OF MAKING AN INVESTMENT DECISION?

01:17PM 1 A. YES.

01:17PM 2 Q. OKAY. AND ARE THESE THE DUE DILIGENCE MATERIALS THAT WERE

01:17PM 3 PROVIDED PURSUANT TO THE CONFIDENTIAL DISCLOSURE AGREEMENT THAT

01:17PM 4 WE LOOKED AT PREVIOUSLY?

01:17PM 5 A. YES.

01:17PM 6 Q. OKAY.

01:17PM 7 YOUR HONOR, THE GOVERNMENT OFFERS EXHIBIT 4858.

01:17PM 8 MR. COOPERSMITH: 802, YOUR HONOR.

01:18PM 9 THE COURT: AND YOU'RE OFFERING THE ENTIRETY OF THE

01:18PM 10 DOCUMENT?

01:18PM 11 MR. LEACH: YES, YOUR HONOR.

01:18PM 12 THE COURT: OKAY. THE OBJECTION IS OVERRULED. IT'S

01:18PM 13 ADMITTED, AND IT MAY BE PUBLISHED.

01:18PM 14 (GOVERNMENT'S EXHIBIT 4858 WAS RECEIVED IN EVIDENCE.)

01:18PM 15 MR. LEACH: AND WE MAY DISPLAY, YOUR HONOR?

01:18PM 16 THE COURT: YES.

01:18PM 17 MR. LEACH: OKAY.

01:18PM 18 Q. MS. PETERSON, I DRAW YOUR ATTENTION TO PAGE 1.

01:18PM 19 DO YOU SEE THE TITLE THERANOS CONFIDENTIAL OVERVIEW?

01:18PM 20 A. YES.

01:18PM 21 Q. AND THIS IS ESSENTIALLY A POWERPOINT OF INFORMATION ABOUT

01:18PM 22 THERANOS THAT YOU RELIED ON IN THE COURSE OF MAKING THE

01:19PM 23 INVESTMENT DECISION?

01:19PM 24 A. YES.

01:19PM 25 Q. AND WERE THE REPRESENTATIONS IN HERE IMPORTANT TO YOU?

01:19PM 1 A. YES.

01:19PM 2 Q. OKAY. WHY?

01:19PM 3 A. WELL, IT'S IMPORTANT TO KNOW EXACTLY WHAT WE'RE INVESTING

01:19PM 4 IN, AND THERE'S A LOT OF INFORMATION IN HERE.

01:19PM 5 Q. INFORMATION THAT YOU COULDN'T GET FROM OTHER SOURCES?

01:19PM 6 A. CORRECT.

01:19PM 7 Q. OKAY. LET ME DRAW YOUR ATTENTION TO PAGE 3.

01:19PM 8 DO YOU SEE THE HEADING THERANOS INC.?

01:19PM 9 A. YES.

01:19PM 10 Q. AND THERE'S SOME HIGHLIGHTING -- WELL, WE'VE HIGHLIGHTED

01:19PM 11 THERANOS INC.

01:19PM 12 THERE'S SOME ADDITIONAL HIGHLIGHTING BELOW THAT IN THE

01:19PM 13 PARAGRAPH BEGINNING "THERANOS'S PROPRIETARY, PATENTED

01:19PM 14 TECHNOLOGY."

01:19PM 15 DO YOU SEE THE HIGHLIGHTING?

01:19PM 16 A. YES.

01:19PM 17 Q. IS THAT YOUR HIGHLIGHTING?

01:19PM 18 A. YES.

01:19PM 19 Q. AND THEN THERE IS SOME HANDWRITING. IT SAYS, "CLINICAL

01:19PM 20 LAB IMPROVEMENT AMENDMENTS."

01:19PM 21 IS THAT YOUR HANDWRITING?

01:19PM 22 A. YES.

01:19PM 23 Q. THIS READS, "THERANOS'S PROPRIETARY, PATENTED TECHNOLOGY

01:20PM 24 RUNS COMPREHENSIVE BLOOD TESTS FROM A FINGERSTICK AND TESTS FOR

01:20PM 25 MICRO-SAMPLES OF OTHER MATRIXES AND GENERATES SIGNIFICANTLY

01:20PM 1 HIGHER INTEGRITY DATA THAN CURRENTLY POSSIBLE."

01:20PM 2 DO YOU SEE THAT LANGUAGE?

01:20PM 3 A. YES.

01:20PM 4 Q. AND WAS THIS INFORMATION IMPORTANT TO YOU?

01:20PM 5 A. YES.

01:20PM 6 Q. OKAY. WHY DID YOU HIGHLIGHT "GENERATES SIGNIFICANTLY

01:20PM 7 HIGHER INTEGRITY DATA THAN CURRENTLY POSSIBLE"?

01:20PM 8 A. BECAUSE IT'S IMPORTANT.

01:20PM 9 Q. OKAY. IN THE, IN THE THIRD PARAGRAPH IT SAYS, "CURRENT

01:20PM 10 AND PAST CLIENTS INCLUDE 10 OF THE TOP 15 MAJOR PHARMACEUTICAL

01:20PM 11 COMPANIES, MID SIZED BIO-PHARMAS, PROMINENT RESEARCH

01:20PM 12 INSTITUTIONS, HEALTH CARE PAYORS, AND U.S. AND FOREIGN

01:20PM 13 GOVERNMENT HEALTH AND MILITARY ORGANIZATIONS."

01:20PM 14 DO YOU SEE THAT LANGUAGE?

01:20PM 15 A. YES.

01:20PM 16 Q. WAS THAT IMPRESSIVE TO YOU?

01:20PM 17 A. VERY.

01:20PM 18 Q. DID THIS TOPIC COME UP IN YOUR MEETING OUT IN CALIFORNIA?

01:21PM 19 A. YES.

01:21PM 20 Q. AND WHAT DID MS. HOLMES AND MR. BALWANI TELL YOU ABOUT

01:21PM 21 THERANOS'S WORK WITH THE MILITARY?

01:21PM 22 A. THAT THEY WERE DOING WORK FOR THE DEPARTMENT OF DEFENSE.

01:21PM 23 AND, AGAIN, I DON'T REMEMBER ALL OF THE SPECIFICS, BUT I RECALL

01:21PM 24 THEM TALKING ABOUT IT BEING IN HELICOPTERS, EVACUATION

01:21PM 25 HELICOPTERS, AS WELL AS I DO RECALL CONVERSATIONS AROUND EBOLA

01:21PM 1 AND THEM TRYING TO FIGURE OUT HOW TO TACKLE THAT ISSUE.

01:21PM 2 Q. LET'S LOOK AT PAGE 4, PLEASE.

01:21PM 3 IS THIS A LISTING OF MEMBERS OF THERANOS'S BOARD OF

01:21PM 4 DIRECTORS?

01:21PM 5 A. YES.

01:21PM 6 Q. AND THIS WAS AN IMPRESSIVE LIST TO YOU?

01:21PM 7 A. YES.

01:21PM 8 Q. DOWN AT THE BOTTOM IT SAYS SUNNY BALWANI, THERANOS

01:21PM 9 PRESIDENT AND COO.

01:21PM 10 DO YOU SEE THAT LANGUAGE?

01:21PM 11 A. YES.

01:21PM 12 Q. AND YOU UNDERSTOOD MR. BALWANI WAS THE PRESIDENT AND CHIEF

01:21PM 13 EXECUTIVE OFFICER OF THE COMPANY?

01:21PM 14 MR. COOPERSMITH: OBJECTION. MISSTATES THE TITLE.

01:22PM 15 MR. LEACH: I THINK I SAID EXECUTIVE.

01:22PM 16 CHIEF OPERATING OFFICER.

01:22PM 17 THANK YOU, MR. COOPERSMITH.

01:22PM 18 THE WITNESS: CORRECT.

01:22PM 19 BY MR. LEACH:

01:22PM 20 Q. AND WAS THERE ANYBODY ELSE BESIDES MS. HOLMES AND

01:22PM 21 MR. BALWANI IN YOUR MEETING OUT IN CALIFORNIA?

01:22PM 22 A. NO.

01:22PM 23 Q. IF WE LOOK AT THE NEXT SLIDE, PAGE 5, DO YOU SEE WHERE IT

01:22PM 24 SAYS "THERANOS IS CERTIFIED AS A HIGH COMPLEXITY CLIA

01:22PM 25 LABORATORY"?

01:22PM 1 DO YOU SEE THAT?

01:22PM 2 A. YES.

01:22PM 3 Q. AND AT THE TIME, HAD YOU HAD ANY EXPERIENCE WITH SOMETHING

01:22PM 4 CALLED CLIA?

01:22PM 5 A. NO.

01:22PM 6 Q. I THINK YOU WROTE IN HANDWRITING "CLINICAL LAB IMPROVEMENT

01:22PM 7 AMENDMENTS"?

01:22PM 8 A. CORRECT.

01:22PM 9 Q. IS THAT -- WE NEED TO SPEAK ONE AT A TIME, MS. PETERSON.

01:22PM 10 A. YEP.

01:22PM 11 Q. IS THAT BECAUSE YOU WERE LEARNING ABOUT IT FOR THE FIRST

01:22PM 12 TIME?

01:22PM 13 A. YES.

01:22PM 14 Q. OKAY. AND IN THE HIGHLIGHTED ROW IT SAYS, "HIGH

01:22PM 15 COMPLEXITY REQUIRES THE HIGHEST LEVEL OF TRAINING, TECHNIQUE,

01:23PM 16 AND RESULT INTERPRETATION MOST STRINGENT STANDARDS. LABS ARE

01:23PM 17 SURVEYED ROUTINELY AND RANDOMLY."

01:23PM 18 IS THAT INFORMATION THAT YOU LEARNED FROM THERANOS THROUGH

01:23PM 19 THE DUE DILIGENCE MATERIALS?

01:23PM 20 A. YES.

01:23PM 21 Q. OKAY. LET'S LOOK AT THE NEXT PAGE.

01:23PM 22 DO YOU SEE A CERTIFICATE OF COMPLIANCE?

01:23PM 23 A. YES.

01:23PM 24 Q. AND DO YOU SEE THE NAME ADAM ROSENDORFF, M.D., DIRECT?

01:23PM 25 A. YES.

01:23PM 1 Q. DID THE NAME ADAM ROSENDORFF COME UP IN YOUR MEETING IN
01:23PM 2 CALIFORNIA IN OCTOBER OF 2014?
01:23PM 3 A. NOT THAT I RECALL.
01:23PM 4 Q. OKAY. DID MS. HOLMES OR MR. BALWANI BRING TO YOUR
01:23PM 5 ATTENTION ANY ISSUES THAT DR. ROSENDORFF WAS RAISING?
01:23PM 6 A. NO.
01:23PM 7 Q. LET'S LOOK AT THE NEXT TAB, TAB 7, OR PAGE 7.
01:23PM 8 DO YOU SEE WHERE IT SAYS, "THERANOS PROFICIENCY TESTING
01:23PM 9 AND AUDITS"?
01:24PM 10 A. YES.
01:24PM 11 Q. IT THEN READS, "SINCE 2011 THERANOS'S CLIA LAB HAS BEEN
01:24PM 12 SUBJECTED TO REGULAR PROFICIENCY TESTING (TESTING OF BLINDED
01:24PM 13 SAMPLES) BY MULTIPLE NATIONALLY RECOGNIZED AGENCIES."
01:24PM 14 DO YOU SEE THAT LANGUAGE?
01:24PM 15 A. YES.
01:24PM 16 Q. AND WAS THAT IMPRESSIVE TO YOU?
01:24PM 17 A. YES.
01:24PM 18 Q. AND DID YOU UNDERSTAND THAT THE PROFICIENCY TESTING
01:24PM 19 DESCRIBED IN THIS SLIDE RELATED TO THE DEVICE THAT THERANOS WAS
01:24PM 20 SHOWING YOU?
01:24PM 21 A. THAT WAS MY UNDERSTANDING, YES.
01:24PM 22 Q. WHY WAS THAT YOUR UNDERSTANDING?
01:24PM 23 A. BECAUSE THAT WAS THE ONLY DEVICE THAT WE KNEW THAT THEY
01:24PM 24 USED.
01:24PM 25 Q. OKAY. THERE'S SOME LINES AND NUMBERS IN HERE UNDER THE

01:24PM 1 COLUMNS AGENCY SURVEY, DATE, SCORE.

01:24PM 2 DO YOU SEE THAT?

01:24PM 3 A. YES.

01:24PM 4 Q. AND THE FIRST ONE IS API HEMATOLOGY, NOVEMBER 23RD, 2011.

01:24PM 5 DO YOU SEE THAT?

01:24PM 6 A. YES.

01:24PM 7 Q. AND DID YOU BELIEVE THAT PROFICIENCY TESTING TO RELATE TO

01:24PM 8 THE DEVICE THAT YOU OBSERVED?

01:24PM 9 A. YES.

01:24PM 10 Q. BASED ON THIS, DID YOU UNDERSTAND THERANOS WAS USING ITS

01:25PM 11 DEVICE IN ITS CLIA LAB AT THE TIME OF THE PROFICIENCY TESTING?

01:25PM 12 A. YES.

01:25PM 13 Q. THE NEXT LINE SAYS, "API

01:25PM 14 CHEMISTRY/IMMUNOLOGY/IMMUNOCHEMISTRY." AND THERE'S A DATE OF

01:25PM 15 JUNE 1, 2012.

01:25PM 16 DO YOU SEE THAT?

01:25PM 17 A. YES.

01:25PM 18 Q. BASED ON THIS STATEMENT, DID YOU BELIEVE THAT THERANOS WAS

01:25PM 19 USING ITS ANALYZER IN THE CLIA LAB IN 2012?

01:25PM 20 A. YES.

01:25PM 21 Q. WAS THAT IMPRESSIVE TO YOU?

01:25PM 22 A. YES.

01:25PM 23 Q. WHY?

01:25PM 24 A. AGAIN, IT WAS THE ONLY ANALYZER MACHINE THAT WE THOUGHT

01:25PM 25 THEY EVER USED, SO -- AND IT WAS, TO US, THIRD PARTY VALIDATED

01:25PM 1 BY THIS PROFICIENCY TESTING AND AUDIT.

01:25PM 2 Q. IF THIS PROFICIENCY TESTING RELATED TO FDA APPROVED

01:25PM 3 DEVICES MADE BY OTHERS, WOULD THAT HAVE BEEN EQUALLY RELEVANT

01:26PM 4 TO YOU?

01:26PM 5 A. RELEVANT, BUT THAT -- BAD.

01:26PM 6 Q. BAD WHY?

01:26PM 7 A. THAT'S NOT AT ALL WHAT WE UNDERSTOOD AT THE TIME THAT THEY

01:26PM 8 WERE USING.

01:26PM 9 Q. LET ME DRAW YOUR ATTENTION TO PAGE 8.

01:26PM 10 DO YOU SEE WHERE IT SAYS VALIDATION OF THERANOS TESTS IN

01:26PM 11 BOLD?

01:26PM 12 A. YES.

01:26PM 13 Q. AND BENEATH THAT -- AND THERE'S -- I'VE HIGHLIGHTED THAT,

01:26PM 14 OR MS. WACHS HAS HIGHLIGHTED THAT HEADING AGAIN, BUT THERE'S

01:26PM 15 ALSO SOME HIGHLIGHTING BELOW THAT.

01:26PM 16 IS THAT YOUR HIGHLIGHTING AGAIN?

01:26PM 17 A. YES.

01:26PM 18 Q. THIS READS, "THERANOS HAS BEEN COMPREHENSIVELY VALIDATED

01:26PM 19 OVER THE COURSE OF THE LAST SEVEN YEARS BY TEN OF THE FIFTEEN

01:26PM 20 LARGEST PHARMACEUTICAL COMPANIES, WITH HUNDREDS OF THOUSANDS OF

01:26PM 21 ASSAYS PROCESSED."

01:26PM 22 IS THAT CONSISTENT WITH STATEMENTS MADE TO YOU BY

01:26PM 23 MS. HOLMES IN THE PHONE CALL THAT YOU HAD WITH HER?

01:27PM 24 A. YES.

01:27PM 25 Q. AND DID THIS TOPIC COME UP IN YOUR MEETING IN CALIFORNIA

01:27PM 1 IN OCTOBER?

01:27PM 2 A. YES.

01:27PM 3 Q. LET ME DRAW YOUR ATTENTION TO PAGE 10.

01:27PM 4 MS. PETERSON, THERE'S SOME IMAGES ON THE SCREEN.

01:27PM 5 TO THE LEFT THERE ARE FOUR VIALS OF BLOOD, AND TO THE

01:27PM 6 RIGHT THERE IS A SMALLER VIAL WITH A SMALLER AMOUNT OF BLOOD.

01:27PM 7 DO YOU SEE THAT?

01:27PM 8 A. YES.

01:27PM 9 Q. AND WHAT DID YOU UNDERSTAND THIS TO REPRESENT?

01:27PM 10 A. THAT THE LEFT, LARGER VIALS WERE THE TRADITIONAL VEIN DRAW

01:27PM 11 THAT OTHER LABS USE; AND THAT THE FINGERSTICK, SMALLER VIAL, IS

01:27PM 12 WHAT WAS USED BY THERANOS.

01:27PM 13 Q. OKAY. IF I COULD MOVE TO PAGE 14, PLEASE.

01:28PM 14 I'M SORRY. PAGE 12, MS. WACHS.

01:28PM 15 DO YOU SEE THE HEADING OVERVIEW OF CURRENT LABORATORY

01:28PM 16 MARKET?

01:28PM 17 A. YES.

01:28PM 18 Q. OKAY. AND IN THE FIRST BULLET IT READS, "DECades OLD

01:28PM 19 BUSINESS PROCESSES -- AND TECHNOLOGY INVESTMENTS AROUND THOSE

01:28PM 20 BUSINESS PROCESSES -- WITH VERY LITTLE MOTIVATION TO INNOVATE,

01:28PM 21 HAS CREATED A DUOPOLY OF BUSINESSES BURDENED WITH

01:28PM 22 INFRASTRUCTURE COSTS AND LITTLE/NO R&D."

01:28PM 23 DO YOU SEE THAT?

01:28PM 24 A. YES.

01:28PM 25 Q. AND DID YOU UNDERSTAND R&D TO BE RESEARCH AND DEVELOPMENT?

01:28PM 1 A. CORRECT.

01:28PM 2 Q. AND TO THE RIGHT THERE'S SOME HANDWRITING, QUEST LAB CORP.

01:28PM 3 WAS THAT YOUR HANDWRITING?

01:28PM 4 A. YES.

01:28PM 5 Q. WHAT WERE YOU CONVEYING THERE?

01:28PM 6 A. I WAS JUST NOTING WHO THE DUOPOLY WAS, WAS THOSE TWO.

01:28PM 7 Q. OKAY. IS THAT INFORMATION THAT YOU GOT FROM MS. HOLMES

01:28PM 8 AND MR. BALWANI?

01:28PM 9 A. YES.

01:28PM 10 Q. IT THEN SAYS, "SELECT CONTRACTS BETWEEN LABS AND INSURANCE

01:28PM 11 COMPANIES HAVE SET PRECEDENT FOR HIGHER COSTS FOR 'PULL

01:29PM 12 THROUGH' PATIENTS."

01:29PM 13 IN THE COURSE OF YOUR DIALOGUE WITH MS. HOLMES AND

01:29PM 14 MR. BALWANI, DID THEY MAKE STATEMENTS ABOUT THE COSTS OF THE

01:29PM 15 TESTS THAT THEY OFFERED?

01:29PM 16 A. YES.

01:29PM 17 Q. AND WAS THAT IMPRESSIVE TO YOU?

01:29PM 18 A. YES.

01:29PM 19 Q. AND DID YOU BELIEVE THAT THOSE TESTS COULD BE OFFERED AT A

01:29PM 20 LOW COST BECAUSE THERANOS WAS PROFITABLE?

01:29PM 21 A. YES.

01:29PM 22 Q. OKAY. NOW, MS. WACHS, IF WE CAN GO TO PAGE 14.

01:29PM 23 DO YOU SEE THE HEADING COST SAVINGS, THE FULL RANGE OF

01:29PM 24 TESTS. A FRACTION OF THE COSTS?

01:29PM 25 A. YES. I'M SORRY.

01:29PM 1 Q. NO PROBLEM.

01:29PM 2 WAS THIS INFORMATION IMPORTANT TO YOU?

01:29PM 3 A. YES.

01:29PM 4 Q. WHY?

01:29PM 5 A. BECAUSE, IF IT DID THAT, IT WAS DEFINITELY GOING TO

01:29PM 6 TRANSFORM HEALTH CARE. IF YOU CAN OFFER THESE TYPES OF BLOOD

01:29PM 7 TESTS THAT WERE LESS INVASIVE TO PEOPLE VIA FINGERSTICK AND DO

01:30PM 8 IT AT MUCH LESS COST, MORE PEOPLE WOULD PROBABLY GET TESTED,

01:30PM 9 WHICH, AGAIN, IT GOES BACK TO TRYING TO IMPROVE PREVENTATIVE

01:30PM 10 HEALTH CARE.

01:30PM 11 Q. CAN WE GO TO THE NEXT SLIDE, PLEASE, SLIDE 15.

01:30PM 12 DO YOU SEE THE FOURTH -- OR THE SECOND BULLET FROM THE

01:30PM 13 BOTTOM, "THE UNPRECEDENTED LACK OF VARIATION FROM SYSTEM TO

01:30PM 14 SYSTEM YIELDS HIGHER INTEGRITY DATA."

01:30PM 15 DO YOU SEE THAT LANGUAGE?

01:30PM 16 A. YES.

01:30PM 17 Q. WAS THIS INFORMATION IMPORTANT TO YOU?

01:30PM 18 A. YES.

01:30PM 19 Q. AND THEN IT LOOKS TO THE RIGHT LIKE YOU WROTE, "THERANOS

01:30PM 20 IS STANDARDIZED."

01:30PM 21 WHAT DID YOU MEAN BY THAT?

01:30PM 22 A. I'M NOT EXACTLY SURE.

01:30PM 23 Q. DID MS. HOLMES OR MR. BALWANI MAKE STATEMENTS TO YOU TO

01:30PM 24 THE EFFECT OF WE ARE AUTOMATED BY VIRTUE OF HAVING ONE MACHINE?

01:31PM 25 A. THEY MADE A LOT OF STATEMENTS AROUND THE AUTOMATION, AS

01:31PM 1 WELL AS THE LESS FREQUENT HANDLING BY AN INDIVIDUAL.

01:31PM 2 I THINK THERE WERE STATS AROUND MANY OF THE ERRORS CAME

01:31PM 3 FROM THE HUMAN TOUCH OF THE SAMPLES, AND THEY DIDN'T HAVE THAT.

01:31PM 4 Q. OKAY.

01:31PM 5 A. SO IT WAS LESS ERRORS.

01:31PM 6 Q. IF WE CAN NOW FLIP TO PAGE 28.

01:31PM 7 DO YOU SEE THE HEADING SAME TESTS, A WHOLE NEW APPROACH?

01:31PM 8 A. YES.

01:31PM 9 Q. AND BENEATH THAT DO YOU SEE WHERE IT SAYS, "THE ACTIONABLE

01:31PM 10 INFORMATION YOU NEED 1/1,000 THE SIZE OF A TYPICAL BLOOD DRAW."

01:31PM 11 AND THEN THERE ARE SOME IMAGES.

01:31PM 12 DO YOU SEE THAT?

01:31PM 13 A. YES.

01:31PM 14 Q. "THERANOS RUNS ANY TEST AVAILABLE IN CENTRAL LABORATORIES,

01:31PM 15 AND PROCESSES ALL SAMPLE TYPES."

01:31PM 16 WAS THIS INFORMATION IMPORTANT TO YOU?

01:31PM 17 A. VERY.

01:31PM 18 Q. HOW SO?

01:32PM 19 A. BECAUSE THAT WAS REVOLUTIONARY THAT THIS MACHINE COULD DO

01:32PM 20 THAT. IT COULD PROCESS, WE WERE TOLD, HUNDREDS OF TESTS, AND

01:32PM 21 MULTIPLE TESTS WITH THE SAME FINGERSTICK DRAW.

01:32PM 22 Q. OKAY. DID MS. HOLMES OR MR. BALWANI EVER TELL YOU THAT

01:32PM 23 THERANOS WAS DOING THE MAJORITY OF ITS TESTS FROM VEIN DRAWS?

01:32PM 24 A. NO.

01:32PM 25 Q. FURTHER BELOW IT SAYS, "THERANOS PROVIDES THE HIGHEST

01:32PM 1 LEVEL OF OVERSIGHT, AUTOMATION, AND STANDARDIZATION IN OUR PRE-

01:32PM 2 AND POST-ANALYTIC PROCESSES, ENSURING THE HIGHEST LEVELS OF

01:32PM 3 ACCURACY AND PRECISION."

01:32PM 4 WERE THOSE STATEMENTS IMPORTANT TO YOU?

01:32PM 5 A. YES.

01:32PM 6 Q. OKAY. IF WE CAN GO TO PAGE 31, PLEASE.

01:32PM 7 DO YOU SEE THE HEADING A NEW STANDARD IN QUALITY?

01:33PM 8 A. YES.

01:33PM 9 Q. AND BENEATH THAT IT SAYS, "THE HIGHEST LEVELS OF

01:33PM 10 ACCURACY."

01:33PM 11 WHAT DID YOU UNDERSTAND THAT TO MEAN?

01:33PM 12 A. THAT THE MACHINE WAS VERY ACCURATE.

01:33PM 13 Q. WAS THAT IMPORTANT TO YOU?

01:33PM 14 A. YES.

01:33PM 15 Q. WHY?

01:33PM 16 A. BECAUSE IT, IT WORKED. IT DID WHAT THEY SAID IT WOULD

01:33PM 17 DO --

01:33PM 18 Q. OKAY. AND DID THIS --

01:33PM 19 A. -- ACCURATELY.

01:33PM 20 Q. AND DID THIS TOPIC COME UP IN YOUR MEETING IN CALIFORNIA

01:33PM 21 WITH MR. BALWANI?

01:33PM 22 A. YES.

01:33PM 23 Q. OKAY. AND WHAT WAS SAID?

01:33PM 24 A. REPEATEDLY SAID THAT THE MACHINE WORKED, THAT -- IT WASN'T

01:33PM 25 EVER A QUESTION IN OUR MIND THAT IT DIDN'T WORK GIVEN ALL OF

01:33PM 1 THE INFORMATION THAT THEY HAD SAID AND GIVEN US.

01:33PM 2 Q. OKAY. LET'S LOOK AT PAGE 32.

01:33PM 3 DO YOU SEE THE HEADING NEW POSSIBILITIES IN THE LAB?

01:33PM 4 A. YES.

01:33PM 5 Q. AND THEN IN THE LEFT COLUMN, UNDER ROUTINE, SPECIALTY AND

01:34PM 6 ESOTERIC TESTING, THERE ARE SOME BULLETS, "THERANOS RUNS ANY

01:34PM 7 TEST AVAILABLE IN CENTRAL LABORATORIES.

01:34PM 8 "THERANOS CAN PROCESS ANY SAMPLE TYPE."

01:34PM 9 AND THEN TO THE RIGHT, "THE UNPRECEDENTED LACK OF

01:34PM 10 VARIATION WITH THERANOS YIELDS:

01:34PM 11 "HIGHER INTEGRITY DATA AND LONGITUDINAL TRENDING?"

01:34PM 12 IS THIS ADDITIONAL INFORMATION YOU RELIED ON IN THE

01:34PM 13 INVESTMENT DECISION?

01:34PM 14 A. YES.

01:34PM 15 Q. AND IF WE CAN GO TO PAGE 33.

01:34PM 16 DO YOU SEE THE HEADING FASTER RESULTS. FASTER ANSWERS?

01:34PM 17 A. YES.

01:34PM 18 Q. WAS THAT RELEVANT TO YOU?

01:34PM 19 A. YES. THAT THEY COULD DO A BLOOD TEST AND PROVIDE RESULTS

01:34PM 20 IN HOURS WAS VERY IMPORTANT; THAT IS, AGAIN, JUST

01:34PM 21 TRANSFORMING -- IT'S TRANSFORMATIVE IN HEALTH CARE TO BE ABLE

01:34PM 22 TO DO THAT.

01:34PM 23 Q. OKAY. HOW IS THAT TRANSFORMATIVE, IF IT CAN HAPPEN?

01:34PM 24 A. MOST -- AGAIN, MY HUSBAND GETS A LOT OF BLOOD TESTS AND IT

01:35PM 25 TAKES A LOT LONGER THAN A COUPLE HOURS.

01:35PM 1 SO TO GET RESULTS QUICKER, AND TO ALSO DO MULTIPLE TESTS
01:35PM 2 WITH THE ONE VIAL WAS IMPORTANT TO US.
01:35PM 3 Q. LET'S GO TO SLIDE 40.
01:35PM 4 DO YOU SEE THE HEADING THERANOS'S FOOTPRINT UPON NATIONAL
01:35PM 5 DEPLOYMENT: THERANOS WELLNESS CENTERS IN WALGREENS?
01:35PM 6 A. YES.
01:35PM 7 Q. OKAY. AND DO YOU SEE THE IMAGE OF THE MAP WITH LOTS OF
01:35PM 8 GREEN SCATTERED THROUGHOUT?
01:35PM 9 A. YES.
01:35PM 10 Q. OKAY. IN YOUR -- DID THE NOTION OF THERANOS BEING IN 900
01:35PM 11 WALGREENS STORES BY THE END OF 2015 COME UP IN YOUR
01:35PM 12 CONVERSATION IN CALIFORNIA?
01:35PM 13 A. YES.
01:35PM 14 Q. OKAY. AND AT ANY POINT IN TIME DID MS. HOLMES OR
01:35PM 15 MR. BALWANI TELL YOU OF ANY ISSUES OR PROBLEMS WITH THE
01:35PM 16 WALGREENS RELATIONSHIP?
01:35PM 17 A. NO.
01:35PM 18 Q. OKAY. DID THEY TELL YOU THAT WALGREENS WAS FRUSTRATED BY
01:36PM 19 THE HIGH PERCENTAGE OF VENOUS DRAWS?
01:36PM 20 A. NO.
01:36PM 21 Q. LET'S GO TO PAGE 49.
01:36PM 22 DO YOU SEE THE HEADING RECENT PRESS?
01:36PM 23 A. YES.
01:36PM 24 Q. AND THERE'S A NUMBER OF ARTICLES LISTED, "BBC WORLD NEWS,"
01:36PM 25 "FORTUNE," "FORBES."

01:36PM 1 DO YOU SEE THOSE?

01:36PM 2 A. YES.

01:36PM 3 Q. AND TO THE RIGHT THERE'S AN IMAGE OF A "FORTUNE" ARTICLE

01:36PM 4 THAT SAYS, "THIS CEO IS OUT FOR BLOOD."

01:36PM 5 DO YOU SEE THAT?

01:36PM 6 A. YES.

01:36PM 7 Q. AND WHAT DID YOU UNDERSTAND THIS SLIDE TO MEAN?

01:36PM 8 A. THAT THIS WAS RECENT MEDIA AND PRESS AND INTERVIEWS THAT

01:36PM 9 SHE HAD GIVEN AND SUGGESTED TO ME TO GO OUT AND REVIEW ALL OF

01:36PM 10 THESE, WHICH I DID.

01:37PM 11 Q. OKAY. WE LOOKED EARLIER AT AN EMAIL FROM MR. TUBERGEN

01:37PM 12 WITH AN ARTICLE ATTACHED TO IT.

01:37PM 13 IS THAT PART OF WHAT YOU DID IN TERMS OF GOING OUT AND

01:37PM 14 READING EVERYTHING THAT YOU COULD?

01:37PM 15 A. YES.

01:37PM 16 Q. OKAY. AND THE ARTICLE TO THE RIGHT, "THIS CEO IS OUT FOR

01:37PM 17 BLOOD," DO YOU UNDERSTAND THAT TO BE THE ARTICLE FROM

01:37PM 18 MR. PARLOFF?

01:37PM 19 A. YES.

01:37PM 20 Q. AND THAT'S SOMETHING THAT YOU READ AND RELIED ON?

01:37PM 21 A. YES.

01:37PM 22 Q. LET'S LOOK AT PAGE 103.

01:37PM 23 DO YOU SEE THE TITLE EXEMPLARY REPORTS FROM PHARMACEUTICAL

01:37PM 24 PARTNERS?

01:37PM 25 A. YES.

01:37PM 1 Q. OKAY. AND WHAT DID YOU UNDERSTAND THIS TO BE?

01:37PM 2 A. I UNDERSTOOD THESE TO BE KIND OF THIRD PARTY REPORTS AND

01:38PM 3 VALIDATION OF USING THE ANALYZERS.

01:38PM 4 Q. AND WHAT DO YOU MEAN BY "THIRD PARTY"?

01:38PM 5 A. NOT PART OF THERANOS.

01:38PM 6 Q. AND THIS WAS PART OF THE DUE DILIGENCE MATERIALS THAT WERE

01:38PM 7 PROVIDED TO YOU?

01:38PM 8 A. YES.

01:38PM 9 Q. OKAY. LET'S LOOK AT THE NEXT PAGE. IF WE CAN ZOOM IN UP

01:38PM 10 A LITTLE BIT MORE ON PAGE 4, AND IF WE CAN ZOOM IN ON THE TOP

01:38PM 11 HALF ALL OF THE WAY DOWN TO THE BULLET FOR CONCLUSIONS.

01:38PM 12 WAS THIS PART OF WHAT YOU REVIEWED, MS. PETERSON?

01:38PM 13 A. YES.

01:38PM 14 Q. AND WHAT DID YOU UNDERSTAND THIS TO BE?

01:38PM 15 A. A REPORT BY PFIZER THAT VALIDATED THE WORK THAT THEY HAD

01:38PM 16 DONE USING THEIR ANALYZER, USING THERANOS'S ANALYZERS.

01:38PM 17 Q. DID YOU RELY ON THIS REPORT IN THE COURSE OF MAKING YOUR

01:38PM 18 INVESTMENT DECISION?

01:38PM 19 A. YES.

01:38PM 20 Q. OKAY. WHY DID YOU RELY ON THIS?

01:38PM 21 A. ANY OUTSIDE EXTERNAL VALIDATION OF THE ANALYZERS WAS

01:39PM 22 HELPFUL TO US, THAT IT WORKED.

01:39PM 23 Q. AND DID THIS TOPIC OF EXTERNAL THIRD PARTY VALIDATIONS

01:39PM 24 COME UP IN YOUR MEETING IN CALIFORNIA WITH MR. BALWANI?

01:39PM 25 A. YES.

01:39PM 1 Q. HOW SO?

01:39PM 2 A. THEY TALKED A LOT ABOUT THE TEN YEARS OF WORK THAT THEY

01:39PM 3 HAD DONE WITH THE TOP PHARMACEUTICAL COMPANIES, WE TALKED ABOUT

01:39PM 4 THAT QUITE A BIT, AND HOW THEY COULD DO THEIR STUDIES AND DO

01:39PM 5 FINGERSTICK DRAWS SOONER.

01:39PM 6 YOU COULD ONLY DO VEIN DRAWS, LIKE, ONCE EVERY THREE DAYS,

01:39PM 7 AND THESE YOU COULD DO A COUPLE TIMES A DAY, AND IT WAS HELPFUL

01:39PM 8 TO THESE PHARMACEUTICAL STUDIES.

01:39PM 9 WE TALKED A LOT ABOUT HOW THE ANALYZERS WERE BEING USED

01:39PM 10 WITHIN THOSE COMPANIES.

01:39PM 11 Q. BY THE WAY, DID MS. HOLMES DO ALL OF THE TALKING IN THIS

01:39PM 12 OCTOBER MEETING?

01:39PM 13 A. NOT ALL OF THE TALKING, NO.

01:40PM 14 Q. DID MR. BALWANI SPEAK TO PARTICULAR ISSUES IN THE MEETING?

01:40PM 15 A. MY RECOLLECTION IS THAT THE MOST OF HIS PARTICIPATION WAS

01:40PM 16 AROUND THE FINANCIALS.

01:40PM 17 Q. OKAY. WERE THERE PARTS OF THE MEETING WHERE MS. HOLMES OR

01:40PM 18 MR. BALWANI DISAGREED WITH EACH OTHER?

01:40PM 19 A. NO.

01:40PM 20 Q. OKAY. DID YOU VIEW THEM AS SPEAKING WITH ONE VOICE?

01:40PM 21 A. YES.

01:40PM 22 Q. ON THIS PAGE THERE'S A BULLET, CONCLUSIONS, GENERAL,

01:40PM 23 TECHNICAL, ECONOMIC.

01:40PM 24 DO YOU SEE THAT?

01:40PM 25 A. YES.

01:40PM 1 Q. IF YOU COULD NOW TURN TO PAGE 129, THERE ARE A NUMBER OF
01:40PM 2 CONCLUSIONS LISTED HERE, GENERAL, TECHNICAL, AND ECONOMIC.
01:40PM 3 DO YOU SEE THAT?
01:40PM 4 A. YES.
01:40PM 5 Q. AND THIS IS SOMETHING THAT YOU REVIEWED AND RELIED ON?
01:40PM 6 A. YES.
01:40PM 7 Q. OKAY. DID YOU BELIEVE THESE TO BE CONCLUSIONS OF PFIZER?
01:41PM 8 A. YES.
01:41PM 9 Q. FOR EXAMPLE, IN GENERAL -- IN THE FIRST GENERAL CONCLUSION
01:41PM 10 IT SAYS, "THE THERANOS SYSTEM PERFORMED WITH SUPERIOR
01:41PM 11 PERFORMANCE TO REFERENCE ASSAYS WHILE RUNNING IN A COMPLEX
01:41PM 12 AMBULATORY ENVIRONMENT."
01:41PM 13 DID YOU BELIEVE THAT TO BE A CONCLUSION OF PFIZER?
01:41PM 14 A. YES.
01:41PM 15 Q. AND WAS THAT IMPORTANT TO YOU?
01:41PM 16 A. YES.
01:41PM 17 Q. OKAY. WE CAN TAKE THAT DOWN.
01:41PM 18 IF I COULD PLEASE DRAW YOUR ATTENTION, MS. PETERSON, TO
01:41PM 19 EXHIBIT 1853.
01:41PM 20 DO YOU RECOGNIZE THIS?
01:41PM 21 A. YES.
01:41PM 22 Q. AND WHAT IS THIS?
01:41PM 23 A. THESE ARE THE TWO FINANCIAL PAGES THAT CAME IN THE
01:42PM 24 DILIGENCE BINDER.
01:42PM 25 Q. AND THERE'S SOME HANDWRITING ON THIS DOCUMENT.

01:42PM 1 IS THAT YOUR HANDWRITING?

01:42PM 2 A. YES.

01:42PM 3 Q. AND WAS ALL OF THE HANDWRITING DONE AT THE SAME TIME?

01:42PM 4 A. NO. THE QUESTIONS THAT ARE LIGHTER PRINT I KNOW WERE DONE

01:42PM 5 BEFORE THE MEETING IN PALO ALTO, AND THE DARKER PRINT WAS WHAT

01:42PM 6 WE TALKED ABOUT AT THE MEETING.

01:42PM 7 Q. OKAY. AND IS THIS -- DID YOU DISCUSS THIS DOCUMENT WITH

01:42PM 8 MR. BALWANI IN YOUR MEETING IN CALIFORNIA?

01:42PM 9 A. YES.

01:42PM 10 MR. LEACH: YOUR HONOR, I BELIEVE 1853 IS IN

01:42PM 11 EVIDENCE. IT MIGHT BE WITH SOME CONDITIONS.

01:42PM 12 I'D LIKE TO OFFER IT UNCONDITIONALLY.

01:42PM 13 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

01:42PM 14 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:42PM 15 (GOVERNMENT'S EXHIBIT 1853 WAS RECEIVED IN EVIDENCE.)

01:43PM 16 BY MR. LEACH:

01:43PM 17 Q. SO THIS IS A DOCUMENT THAT YOU RECEIVED FROM THERANOS,

01:43PM 18 MS. PETERSON?

01:43PM 19 A. YES.

01:43PM 20 Q. AND YOU DISCUSSED IT WITH MS. HOLMES AND MR. BALWANI IN

01:43PM 21 YOUR MEETING IN CALIFORNIA?

01:43PM 22 A. YES.

01:43PM 23 Q. OKAY. TO THE LEFT UP AT THE TOP IT SAYS, THERANOS

01:43PM 24 CONFIDENTIAL, PROJECTED STATEMENT OF INCOME.

01:43PM 25 DO YOU SEE THAT?

01:43PM 1 A. YES.

01:43PM 2 Q. AND WHAT DID YOU UNDERSTAND THAT TO MEAN PROJECTED

01:43PM 3 STATEMENT OF INCOME?

01:43PM 4 A. YES. 2015 WOULD HAVE BEEN A PROJECTION BASED ON THE

01:43PM 5 CONTRACTS THAT THEY HAD, AND WE TALKED THROUGH WHERE THAT

01:43PM 6 REVENUE WAS GOING TO COME FROM.

01:43PM 7 THE 2014, IT WAS ALREADY MID-OCTOBER, SO WE ASSUMED THAT

01:43PM 8 THEY WERE VERY CLOSE TO THOSE NUMBERS FOR 2014.

01:43PM 9 Q. YOU'RE REFERRING TO THE COLUMNS TO THE RIGHT WHERE IT SAYS

01:43PM 10 PERIOD ENDING DECEMBER 31ST, 2014?

01:44PM 11 A. YES.

01:44PM 12 Q. DECEMBER 31ST, 2015?

01:44PM 13 A. YES.

01:44PM 14 Q. OKAY. AND YOU MADE REFERENCE TO THE TIME PERIOD WHEN YOU

01:44PM 15 RECEIVED THESE, OCTOBER OF 2014?

01:44PM 16 A. YES.

01:44PM 17 Q. AND HOW DID THAT RELATE TO THE FACT THAT THE COLUMN TO THE

01:44PM 18 LEFT RELATES TO NUMBERS FOR THE PERIOD ENDING DECEMBER 2014?

01:44PM 19 A. THEY -- IT WAS OUR UNDERSTANDING THAT THEY WERE ON TRACK

01:44PM 20 TO PRODUCE THIS TYPE OF INCOME STATEMENT FOR THE YEAR ENDING

01:44PM 21 12/31/2014 GIVEN IT WAS ALREADY ALMOST THE END OF OCTOBER.

01:44PM 22 Q. WHEN YOU SAY IT WAS ALREADY ALMOST THE END OF OCTOBER, CAN

01:44PM 23 YOU EXPLAIN WHY THAT FACT WAS RELEVANT TO YOU?

01:44PM 24 A. THEY MADE NO MENTION THAT THEY WEREN'T ANYWHERE NEAR BEING

01:44PM 25 ON TRACK TO HIT THAT NUMBER FOR THAT YEAR.

01:44PM 1 Q. IN THE LEFT THERE'S A ROW, REVENUE U.S. COMMERCIAL ONLY.

01:44PM 2 DO YOU SEE THAT?

01:44PM 3 A. YES.

01:44PM 4 Q. AND THEN BENEATH THAT THERE ARE A NUMBER OF ADDITIONAL

01:45PM 5 ROWS: LAB SERVICES FROM REVENUE U.S. RETAIL PHARMACIES.

01:45PM 6 DO YOU SEE THAT?

01:45PM 7 A. YES.

01:45PM 8 Q. AND TO THE RIGHT THERE'S A NUMBER, 42 MILLION, IN THE

01:45PM 9 COLUMN 12/31/2014.

01:45PM 10 DO YOU SEE THAT?

01:45PM 11 A. YES.

01:45PM 12 Q. AND WHAT DID YOU UNDERSTAND THAT TO MEAN?

01:45PM 13 A. THAT THAT WAS THE REVENUE THAT THEY EXPECTED TO GET FROM

01:45PM 14 RETAIL PHARMACIES, INCLUDING WALGREENS, FOR THAT YEAR.

01:45PM 15 Q. AND BENEATH THAT THERE'S LAB SERVICES REVENUE FROM

01:45PM 16 PHYSICIANS' OFFICES, AND TO THE RIGHT \$11 MILLION.

01:45PM 17 DO YOU SEE THAT?

01:45PM 18 A. YES.

01:45PM 19 Q. AND WHAT DID YOU UNDERSTAND THAT TO REPRESENT?

01:45PM 20 A. THE REVENUE THAT THEY EXPECTED TO GET FROM THE PHYSICIAN

01:45PM 21 OFFICE WORK THAT THEY WERE DOING FOR 12/31/2014.

01:45PM 22 Q. AND BENEATH THAT IT SAYS LAB SERVICES REVENUE FROM

01:45PM 23 HOSPITAL, AND TO THE RIGHT \$47 MILLION.

01:45PM 24 WHAT DID YOU UNDERSTAND THAT TO BE?

01:45PM 25 A. THEY HAD MENTIONED A NUMBER OF HOSPITAL SYSTEMS, LIKE

01:46PM 1 DIGNITY HEALTH AND OTHERS, THAT WERE USING THE ANALYZER, SO WE
01:46PM 2 ASSUMED THAT THAT WAS COMING FROM THOSE CLIENTS.
01:46PM 3 Q. AND THEN BENEATH THAT THERE'S A \$40 MILLION ENTRY FOR
01:46PM 4 PHARMACEUTICAL SERVICES.
01:46PM 5 DO YOU SEE THAT?
01:46PM 6 A. YES.
01:46PM 7 Q. AND WHAT DID YOU UNDERSTAND THAT TO BE?
01:46PM 8 A. I'M NOT SURE SPECIFICALLY THE SERVICES PIECE OF IT. I
01:46PM 9 DON'T RECALL THE ANSWER TO THAT.
01:46PM 10 BUT THAT THEY HAD REVENUE COMING FROM SOME FORM OF
01:46PM 11 PHARMACEUTICAL SERVICES TO THE TUNE OF \$40 MILLION FOR THAT
01:46PM 12 YEAR.
01:46PM 13 Q. TO THE RIGHT IN THE COLUMN FOR 2015, IT LOOKS LIKE THE --
01:46PM 14 THERE WAS A NUMBER 161 MILLION -- WELL, BEFORE I GET TO THAT,
01:46PM 15 THERE'S A NUMBER 470 MILLION FOR LAB SERVICES FROM U.S. RETAIL
01:46PM 16 PHARMACIES.
01:46PM 17 DO YOU SEE THAT?
01:46PM 18 470 MILLION?
01:47PM 19 A. OH, YES.
01:47PM 20 Q. OKAY. AND YOU THOUGHT THAT WAS FROM WALGREENS AND OTHER
01:47PM 21 RETAIL PHARMACIES?
01:47PM 22 A. CORRECT, AND SAFEWAY.
01:47PM 23 Q. OKAY. AND ABOVE THAT THERE'S THE LINE -- THERE'S SOME
01:47PM 24 HANDWRITING, 900 LOCATIONS.
01:47PM 25 DO YOU SEE THAT?

01:47PM 1 A. YES.

01:47PM 2 Q. AND DOES THAT SOMEHOW RELATE TO THE 470 MILLION IN

01:47PM 3 PROJECTED REVENUE?

01:47PM 4 A. YES, THAT WAS THE ROLLOUT FOR WALGREENS.

01:47PM 5 Q. BENEATH THAT IT LOOKS LIKE THERE WAS 161 MILLION

01:47PM 6 ASSOCIATED WITH LAB SERVICES REVENUE FROM PHYSICIAN OFFICES,

01:47PM 7 BUT THAT'S CROSSED OUT.

01:47PM 8 DID YOU CROSS THAT OUT?

01:47PM 9 A. YES. DURING THE MEETING THEY MADE SOME MINOR CHANGES THAT

01:47PM 10 THEY WANTED US TO NOTE, SO I NOTED THOSE ON THE PAGE.

01:47PM 11 Q. WHEN YOU SAY "THEY," THAT'S MS. HOLMES AND MR. BALWANI?

01:47PM 12 A. YES.

01:47PM 13 Q. AND SO WERE MS. HOLMES AND MR. BALWANI TELLING RDV IN THE

01:47PM 14 MEETING, PHYSICIAN OFFICES REVENUE IS NOT GOING TO BE 161

01:47PM 15 MILLION, IT'S GOING TO BE 160 MILLION?

01:47PM 16 A. YES.

01:48PM 17 Q. IS THAT REPRESENTATIVE OF THE LEVEL OF CHANGES THAT THEY

01:48PM 18 WERE DESCRIBING IN THAT OCTOBER 2014 MEETING?

01:48PM 19 A. YES.

01:48PM 20 Q. SAME QUESTIONS WITH RESPECT TO WHAT YOU CROSSED OUT FOR

01:48PM 21 ONSITE SERVICES REVENUE FROM HOSPITALS AND PHARMACEUTICAL

01:48PM 22 SERVICES.

01:48PM 23 CAN YOU TELL US WHAT THOSE CHANGES REPRESENT?

01:48PM 24 A. THIS SAME CONVERSATION, THEY JUST MADE SOME MINOR CHANGES

01:48PM 25 AS TO WHERE THE REVENUE SOURCES WERE COMING FROM, AND I JUST

01:48PM 1 NOTED THEM.

01:48PM 2 Q. THE GRAND TOTAL OF REVENUE PROJECTED FOR 2015 IS

01:48PM 3 \$990 MILLION.

01:48PM 4 DO YOU SEE THAT?

01:48PM 5 A. YES.

01:48PM 6 Q. AND WAS THAT RELEVANT TO YOU?

01:48PM 7 A. YES.

01:48PM 8 Q. HOW SO?

01:48PM 9 A. WELL, IT SHOWED TREMENDOUS GROWTH, THE FACT THAT THEY

01:48PM 10 WERE, THEY WERE -- THAT REVENUE THAT WE WERE TOLD WAS ALL UNDER

01:48PM 11 CONTRACT, THAT WOULD MEAN SIGNIFICANT GROWTH FOR THE BUSINESS.

01:48PM 12 EVEN IF THEY HAD HIT HALF OF THAT NUMBER IN 2015, WE WOULD

01:49PM 13 HAVE CONSIDERED THIS A BIG SUCCESS. THEY WERE ON THEIR WAY TO,

01:49PM 14 YOU KNOW, MOVING THE BALL FORWARD.

01:49PM 15 IN OUR WORLD, YOU DON'T HAVE TO EXACTLY HIT THAT NUMBER,

01:49PM 16 BUT YOU HAVE TO GET CLOSE, IN THE BALLPARK SO TO SPEAK.

01:49PM 17 Q. IS \$150,000 IN THE BALLPARK?

01:49PM 18 A. NO.

01:49PM 19 Q. OKAY. AT ANY POINT IN TIME DID MS. HOLMES OR MR. BALWANI

01:49PM 20 TELL, PRIOR TO 2016, TELL YOU THAT 2014 REVENUE WAS LESS THAN A

01:49PM 21 MILLION DOLLARS?

01:49PM 22 A. NO.

01:49PM 23 Q. OKAY. AT ANY POINT IN TIME DID THEY TELL YOU THAT

01:49PM 24 PHARMACEUTICAL REVENUE FOR 2014 WAS ZERO?

01:49PM 25 A. NO.

01:49PM 1 Q. AT ANY POINT IN TIME DID THEY TELL YOU THAT LAB SERVICES
01:49PM 2 REVENUE FROM HOSPITALS IN 2014 WAS ZERO?
01:49PM 3 A. WELL, FROM HOSPITAL -- YEAH. NO, THEY NEVER DID.
01:49PM 4 Q. OKAY. DID THEY EVER TELL YOU THAT REVENUE FROM 2014 FOR
01:50PM 5 PHYSICIAN OFFICES WAS ZERO?
01:50PM 6 A. NO.
01:50PM 7 Q. FURTHER BELOW IN THE EBITDA -- THERE'S A ROW FOR EBITDA,
01:50PM 8 E-B-I-T-D-A.
01:50PM 9 DO YOU SEE THAT?
01:50PM 10 A. YES.
01:50PM 11 Q. AND WHAT IS EBITDA?
01:50PM 12 A. EARNINGS BEFORE INTEREST, TAXES, DEPRECIATION, AND
01:50PM 13 AMORTIZATION.
01:50PM 14 IT'S A MEASURE OF CASH FLOW.
01:50PM 15 Q. AND TO THE FAR RIGHT THERE'S THE NUMBER 23.9 PERCENT AND
01:50PM 16 IT'S CIRCLED.
01:50PM 17 A. YES.
01:50PM 18 Q. AND WHAT WERE YOU GETTING AT THERE?
01:50PM 19 A. I HAD CALC'D IT PRIOR TO THE MEETING, AND THAT'S WHY IT'S
01:50PM 20 LIGHTER, AND I CIRCLED IT, AND WE TALKED ABOUT THAT MARGIN
01:50PM 21 BEING THAT MARGIN AT THE TIME.
01:50PM 22 Q. AND DID MR. BALWANI MAKE ANY STATEMENTS ABOUT WHERE THAT
01:50PM 23 MARGIN WAS HEADED?
01:50PM 24 A. THEY EXPECTED IT TO GROW OVER TIME, THAT IT WOULD INCREASE
01:51PM 25 FROM THE 24 PERCENT.

01:51PM 1 Q. BUT IT WAS ALREADY A PROFITABLE MARGIN?

01:51PM 2 A. YES.

01:51PM 3 Q. OKAY. IF WE COULD GO BACK UP TO THE TOP AND LOOK AT 2015,

01:51PM 4 BACK TO THE NUMBER 470 MILLION FOR U.S. RETAIL PHARMACIES FOR

01:51PM 5 2015.

01:51PM 6 A. YES.

01:51PM 7 Q. DID MS. HOLMES OR MR. BALWANI EVER TELL YOU THAT THAT

01:51PM 8 NUMBER FOR 2015 WAS LESS THAN A MILLION DOLLARS?

01:51PM 9 A. NO.

01:51PM 10 Q. DID THEY EVER TELL YOU THAT THE 160 MILLION FOR PHYSICIAN

01:51PM 11 OFFICES WAS ZERO?

01:51PM 12 A. NO.

01:51PM 13 Q. DID THEY EVER TELL YOU THAT THE PHARMA REVENUE FOR 2015

01:51PM 14 WAS ZERO?

01:51PM 15 A. NO.

01:51PM 16 Q. I'D LIKE YOU TO NOW PLEASE LOOK, MS. PETERSON, AT WHAT WE

01:51PM 17 HAVE MARKED AS EXHIBIT 2107.

01:52PM 18 THE COURT: WHILE THAT'S COMING UP, FOLKS, WHY DON'T

01:52PM 19 YOU STAND UP AND STRETCH IF YOU WOULD LIKE FOR A MOMENT.

01:52PM 20 YOU CAN, TOO, MS. PETERSON.

01:52PM 21 THE WITNESS: THANK YOU.

01:52PM 22 (STRETCHING.)

01:52PM 23 THE COURT: YOU MAY PROCEED.

01:52PM 24 MR. LEACH: THANK YOU, YOUR HONOR.

01:52PM 25 Q. MS. PETERSON, IS EXHIBIT 2107 AN EMAIL FROM MR. BALWANI TO

01:52PM 1 JERRY TUBERGEN WITH A CC TO ELIZABETH HOLMES AND DOUG DEVOS
01:52PM 2 FROM AMWAY?
01:52PM 3 A. YES.
01:52PM 4 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS
01:52PM 5 EXHIBIT 2107.
01:53PM 6 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.
01:53PM 7 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.
01:53PM 8 (GOVERNMENT'S EXHIBIT 2107 WAS RECEIVED IN EVIDENCE.)
01:53PM 9 MR. LEACH: I'D LIKE TO START, IF WE COULD,
01:53PM 10 MS. WACHS, ON PAGE 2.
01:53PM 11 Q. DOWN TOWARDS THE BOTTOM THERE'S AN EMAIL FROM MR. TUBERGEN
01:53PM 12 TO ELIZABETH HOLMES AND SUNNY BALWANI DATED OCTOBER 19TH, 2014.
01:53PM 13 DO YOU SEE THAT?
01:53PM 14 A. YES.
01:53PM 15 Q. OKAY. AND THIS STARTS OUT, "ELIZABETH AND SUNNY,
01:53PM 16 "THANK YOU SO VERY MUCH FOR OUR MEETING TUESDAY."
01:53PM 17 DO YOU SEE THAT?
01:53PM 18 A. YES.
01:53PM 19 Q. AND DO YOU BELIEVE THAT TO BE A REFERENCE TO YOUR MEETING
01:53PM 20 WITH MS. HOLMES AND MR. BALWANI IN CALIFORNIA?
01:53PM 21 A. YES.
01:53PM 22 Q. IN THE SECOND PARAGRAPH IT SAYS, "WE WOULD LOVE TO MOVE
01:53PM 23 FORWARD AND BE A PART OF THE NEW SHAREHOLDER BASE YOU ARE
01:53PM 24 ASSEMBLING. AS WE DISCUSSED, AN INVESTMENT OF 100 MILLION," OR
01:53PM 25 100M, "SEEMS TO FIT, IF THAT WORKS FOR YOU AND THE COMPANY."

01:54PM 1 DO YOU SEE THAT?

01:54PM 2 A. YES.

01:54PM 3 Q. AND IS THAT APPROXIMATELY THE INVESTMENT THAT RDV

01:54PM 4 ULTIMATELY MAKES IN THE COMPANY?

01:54PM 5 A. YES.

01:54PM 6 Q. IT THEN SAYS, "WE ARE TRULY HONORED TO HAVE THIS

01:54PM 7 OPPORTUNITY."

01:54PM 8 AND THEN IN THE NEXT PARAGRAPH, "PLEASE HAVE WHOMEVER IS

01:54PM 9 APPROPRIATE FOLLOW UP WITH ME REGARDING NEXT STEPS AT THEIR

01:54PM 10 EARLIEST CONVENIENCE."

01:54PM 11 DO YOU SEE THAT LANGUAGE?

01:54PM 12 A. YES.

01:54PM 13 Q. AND THEN IF WE CAN GO TO THE TOP, DO YOU SEE MS. HOLMES

01:54PM 14 REPLIES, "SUNNY WILL FOLLOW WITH A NOTE TOMORROW WITH THE

01:54PM 15 DETAILS FROM HERE."

01:54PM 16 DO YOU SEE THAT?

01:54PM 17 A. YES.

01:54PM 18 Q. AND IS THAT CONSISTENT WITH YOUR MEMORY OF THE OCTOBER

01:54PM 19 MEETING IN PALO ALTO, THAT MR. BALWANI TOOK OVER TO EXECUTE THE

01:54PM 20 INVESTMENT?

01:54PM 21 A. YES.

01:54PM 22 Q. LET'S GO TO THE FIRST PAGE.

01:55PM 23 DO YOU SEE WHERE MR. BALWANI WROTE, "PER ELIZABETH'S

01:55PM 24 EMAIL, ATTACHED PLEASE FIND ALL OF THE RELEVANT DOCUMENTS FOR

01:55PM 25 THE INVESTMENT."

01:55PM 1 FIRST BULLET, "THE FILE NAMED NEWINVESTOR.ZIP IS A FOLDER
01:55PM 2 THAT CONTAINS THE SOFT COPY OF ALL OF THE INVESTMENT DOCUMENTS
01:55PM 3 YOU ALREADY HAVE IN THE INVESTMENT BINDER."
01:55PM 4 DO YOU SEE THAT?
01:55PM 5 A. YES.
01:55PM 6 Q. AND THE INVESTMENT BINDER, IS THAT A REFERENCE TO THE TWO
01:55PM 7 BINDERS OF DUE DILIGENCE MATERIALS THAT YOU RECEIVED?
01:55PM 8 A. YES, THOSE WERE IN THERE.
01:55PM 9 Q. IT THEN SAYS, "THE 2 ADDITIONAL DOCUMENTS ATTACHED TO THIS
01:55PM 10 EMAIL ARE THE SIGNATURE PAGE AND WIRING INSTRUCTIONS."
01:55PM 11 DO YOU SEE THAT?
01:55PM 12 A. YES.
01:55PM 13 Q. AND THEN IN THE NEXT PARAGRAPH IT ENDS, "ONCE EXECUTED,
01:55PM 14 YOU CAN SEND THE ORIGINAL OF THE EXECUTED DOCUMENT TO MY
01:55PM 15 ATTENTION AT THE ADDRESS BELOW."
01:55PM 16 DO YOU SEE THAT?
01:55PM 17 A. YES.
01:55PM 18 Q. AND THEN DO YOU SEE WHERE MR. BALWANI WROTE, "PLEASE LET
01:55PM 19 ME KNOW IF I CAN PROVIDE ANY ASSISTANCE WITH ANY OF THESE
01:55PM 20 DOCUMENTS"?
01:55PM 21 A. YES.
01:55PM 22 Q. OKAY. I'D LIKE TO LOOK AT THE DOCUMENTS THAT ARE
01:56PM 23 ATTACHED, AND IF WE CAN START ON PAGE 56.
01:56PM 24 DO YOU SEE THE TITLE SERIES C-2 PREFERRED STOCK PURCHASE
01:56PM 25 AGREEMENT?

01:56PM 1 A. YES.

01:56PM 2 Q. AND WHAT IS THE PURPOSE OF THIS DOCUMENT?

01:56PM 3 A. THIS WAS THE SECURITY IN WHICH WE WERE INVESTING IN.

01:56PM 4 Q. OKAY. AND IF WE CAN LOOK AT PAGE 61.

01:56PM 5 DO YOU SEE THERE'S A SECTION FOR REPRESENTATIONS AND

01:56PM 6 WARRANTIES OF THE INVESTORS?

01:56PM 7 A. YES.

01:56PM 8 Q. AND THE INVESTOR HERE WAS RDV OR ONE OF ITS SUBSIDIARIES?

01:56PM 9 A. CORRECT.

01:56PM 10 Q. AND SO THESE ARE REPRESENTATIONS THAT THERANOS REQUIRES OF

01:56PM 11 RDV --

01:56PM 12 A. YES.

01:56PM 13 Q. -- FOR THE INVESTMENT TO TAKE PLACE?

01:56PM 14 A. YES.

01:56PM 15 Q. OKAY. IF WE CAN GO TO THE NEXT PAGE, PAGE 62.

01:57PM 16 IN 4.3, DO YOU SEE THE HEADING INVESTMENT EXPERIENCE?

01:57PM 17 A. YES.

01:57PM 18 Q. AND IT READS, "SUCH INVESTOR" -- THAT'S RDV?

01:57PM 19 A. YES.

01:57PM 20 Q. -- "OR ITS PURCHASER REPRESENTATIVE, WITHIN THE MEANING OF

01:57PM 21 REGULATION D, RULE 501(H)," AND THEN IT CONTINUES, "HAS

01:57PM 22 SUBSTANTIAL EXPERIENCE IN EVALUATING AND INVESTING IN PRIVATE

01:57PM 23 PLACEMENT TRANSACTIONS OF SECURITIES IN COMPANIES SIMILAR TO

01:57PM 24 THE COMPANY."

01:57PM 25 DO YOU SEE THAT LANGUAGE?

01:57PM 1 A. YES.

01:57PM 2 Q. AND THAT LANGUAGE WAS TRUE; CORRECT?

01:57PM 3 A. YES.

01:57PM 4 Q. RDV HAD SUBSTANTIAL INVESTMENT EXPERIENCE?

01:57PM 5 A. YES.

01:57PM 6 Q. IN 4.4 THERE'S A PARAGRAPH, SPECULATIVE NATURE OF

01:57PM 7 INVESTMENT.

01:57PM 8 DO YOU SEE THAT?

01:57PM 9 A. YES.

01:57PM 10 Q. AND IF WE CAN ZOOM IN, MS. HOLLIMAN (SIC), JUST SO WE CAN

01:57PM 11 SEE IT A LITTLE BETTER.

01:57PM 12 THIS SAYS, "SUCH INVESTOR UNDERSTANDS AND ACKNOWLEDGES

01:57PM 13 THAT THE COMPANY HAS A LIMITED FINANCIAL AND OPERATING HISTORY

01:58PM 14 AND THAT AN INVESTMENT IN THE COMPANY IS HIGHLY SPECULATIVE AND

01:58PM 15 INVOLVES SUBSTANTIAL RISKS."

01:58PM 16 DO YOU SEE THAT LANGUAGE?

01:58PM 17 A. YES.

01:58PM 18 Q. AND WERE THE REPRESENTATIONS IN PARAGRAPH 4.4 TRUE TO THE

01:58PM 19 BEST OF YOUR KNOWLEDGE?

01:58PM 20 A. YES.

01:58PM 21 Q. OKAY. IF WE CAN LOOK AT 4.5, ACCESS TO DATA.

01:58PM 22 DOES THIS RELATE TO ACCESS THAT RDV WAS PROVIDED IN

01:58PM 23 ADVANCE OF THE INVESTMENT DECISION?

01:58PM 24 A. IT DOES ACKNOWLEDGE THAT WE DID HAVE ACCESS TO THEM AND TO

01:58PM 25 ASK QUESTIONS AND GOT THE MATERIALS.

01:58PM 1 Q. OKAY. AND ARE THE REPRESENTATIONS IN PARAGRAPH 4.5 TRUE?

01:58PM 2 A. YES.

01:58PM 3 Q. OKAY. DID YOU RELY ON THE DUE DILIGENCE MATERIALS THAT

01:58PM 4 WERE PROVIDED TO RDV?

01:58PM 5 A. YES.

01:58PM 6 Q. AND DID YOU RELY ON THE STATEMENTS THAT MS. HOLMES MADE IN

01:58PM 7 THE PHONE CALL YOU HAD WITH HER AND IN THE MEETING THAT YOU HAD

01:58PM 8 WITH MS. HOLMES AND MR. BALWANI?

01:58PM 9 A. YES.

01:58PM 10 Q. OKAY. WE CAN TAKE THAT DOWN, MS. WACHS.

01:59PM 11 IF I CAN DRAW YOUR ATTENTION TO 2139.

01:59PM 12 IS THIS AN EMAIL EXCHANGE BETWEEN YOU AND MR. BALWANI IN

01:59PM 13 OR AROUND OCTOBER 8TH, 2014?

01:59PM 14 A. YES.

01:59PM 15 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

01:59PM 16 EXHIBIT 2139.

01:59PM 17 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

01:59PM 18 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:59PM 19 (GOVERNMENT'S EXHIBIT 2139 WAS RECEIVED IN EVIDENCE.)

01:59PM 20 BY MR. LEACH:

01:59PM 21 Q. IF WE CAN PLEASE START ON PAGE 2.

01:59PM 22 MS. PETERSON, THERE'S AN EMAIL HERE THAT READS -- FROM YOU

01:59PM 23 TO MR. BALWANI WITH THE SUBJECT RDV INVESTMENTS.

01:59PM 24 DO YOU SEE THAT?

01:59PM 25 A. YES.

01:59PM 1 Q. AND THIS SAYS, "HI SUNNY, DO YOU HAVE JUST A FEW MINUTES
02:00PM 2 YET TODAY TO TALK? JUST TRYING TO MANAGE LOGISTICS OF CLOSING.
02:00PM 3 LET ME KNOW A GOOD TIME."
02:00PM 4 WHAT DID YOU MEAN BY "LOGISTICS OF CLOSING"?
02:00PM 5 A. WHAT THE PLAN WAS AND HOW THEY WANTED TO RECEIVE THE
02:00PM 6 MONEY, AND I DID NOT HAVE THE WIRE INSTRUCTIONS FROM JERRY, SO
02:00PM 7 I NEEDED THOSE.
02:00PM 8 Q. JERRY IS MR. TUBERGEN?
02:00PM 9 A. CORRECT.
02:00PM 10 Q. YOUR BOSS?
02:00PM 11 A. YES.
02:00PM 12 Q. OKAY. AND IF WE CAN GO TO PAGE 1, PLEASE.
02:00PM 13 DO YOU SEE ROUGHLY HALFWAY THROUGH THE PAGE, MR. BALWANI
02:00PM 14 WRITES "HI LISA,
02:00PM 15 "GREAT TO TALK TO YOU. ATTACHED ARE THE WIRING
02:00PM 16 INSTRUCTIONS"?
02:00PM 17 A. YES.
02:00PM 18 Q. SO MR. BALWANI GOT YOU THE WIRING INSTRUCTIONS?
02:00PM 19 A. YES.
02:00PM 20 Q. AND THEN UP AT THE TOP YOU REPLY, "WONDERFUL SUNNY, THANK
02:00PM 21 YOU."
02:00PM 22 IT THEN CONTINUES.
02:00PM 23 "I APPRECIATE THE COLOR ON REPORTING, HELPS ME IN MANAGING
02:00PM 24 THOSE EXPECTATIONS ON THIS END. A CAP CHART ISN'T NECESSARY,
02:01PM 25 BUT CERTAINLY WOULD HELP ME MANAGE MY INTERNAL REPORTING, BUT

02:01PM 1 ONLY IF YOU ARE COMFORTABLE SHARING THAT AT SOME POINT POST
02:01PM 2 CLOSE -- AND IF YOU PREFER A REDACTED VERSION TO KEEP OTHER
02:01PM 3 INVESTOR NAMES CONFIDENTIAL, THAT WORKS TOO."

02:01PM 4 DO YOU SEE THAT?

02:01PM 5 A. YES.

02:01PM 6 Q. AND WHAT WERE YOU GETTING AT HERE?

02:01PM 7 A. OTHER PARTS OF LOGISTICS OF CLOSING IS TO MAKE SURE THAT I
02:01PM 8 HAVE EVERYTHING THAT I NEED TO KIND OF MANAGE THE INVESTMENT
02:01PM 9 GOING FORWARD, AND TWO OF THOSE THINGS IS A CAP CHART SO THAT I
02:01PM 10 CAN -- I KNEW EXACTLY WHAT WE OWNED IN TERMS OF A PERCENTAGE SO
02:01PM 11 THAT I COULD EVENTUALLY DO VALUATIONS OF THE BUSINESS IN THE
02:01PM 12 FUTURE. SO THAT WAS IMPORTANT TO ME.

02:01PM 13 AS WELL AS WE TYPICALLY GET MONTHLY FINANCIAL STATEMENTS
02:01PM 14 FROM ANY COINVESTMENT THAT WE MAKE WITH A PRIVATE EQUITY FUND.

02:01PM 15 I NEEDED TO FULLY UNDERSTAND AND MANAGE EXPECTATIONS OF
02:02PM 16 HOW WE WERE GOING TO RECEIVE FINANCIAL INFORMATION IN THE
02:02PM 17 FUTURE FROM THE COMPANY.

02:02PM 18 SO WE HAD A DISCUSSION AROUND THAT AS WELL.

02:02PM 19 Q. WHAT DID MR. BALWANI SAY?

02:02PM 20 A. HE TOLD ME THAT THEY WEREN'T GOING TO SEND ANYTHING OUT IN
02:02PM 21 WRITING IN TERMS OF FINANCIAL INFORMATION, THAT IT WAS FOR
02:02PM 22 CONFIDENTIALITY REASONS, AND THAT THEY EXPECTED TO MEET WITH
02:02PM 23 INVESTORS REGULARLY MORE OFTEN, EVEN MORE OFTEN THAN ANNUALLY
02:02PM 24 BECAUSE THEY WANTED TO AGAIN GET OUR INSIGHT. ALL OF THE
02:02PM 25 INVESTORS HAD MANAGED BUSINESSES, LARGE BUSINESSES BEFORE, AND

02:02PM 1 THEY WANTED TO GET OUR INPUT.

02:02PM 2 SO WE WERE LEFT WITH THE UNDERSTANDING THAT WE WERE GOING

02:02PM 3 TO HAVE REGULAR CONVERSATIONS AROUND THE FINANCIAL PERFORMANCE

02:02PM 4 OF THE COMPANY AND HOW IT WAS MOVING FORWARD, BUT IT WAS GOING

02:02PM 5 TO COME IN THE FORM OF VERBAL MEETINGS VERSUS IN TANGIBLE

02:03PM 6 WRITING OR EMAIL.

02:03PM 7 Q. DID EVEN THOSE VERBAL MEETINGS END UP HAPPENING?

02:03PM 8 A. NO.

02:03PM 9 Q. THERE'S ALSO REFERENCE TO A CAP TABLE.

02:03PM 10 WHAT DID MR. BALWANI TELL YOU ABOUT THE CAP TABLE?

02:03PM 11 A. I UNDERSTAND THE CONFIDENTIALITY AROUND WANTING -- NOT

02:03PM 12 WANTING NAMES PRESENTED IN A CAP CHART, SO I WAS OFFERING TO

02:03PM 13 REDACT THE NAMES.

02:03PM 14 I REALLY JUST WANTED TO UNDERSTAND THE OWNERSHIP

02:03PM 15 CAPITALIZATION OF THE BUSINESS, AND I WAS TRYING TO GET THAT

02:03PM 16 INFORMATION REDACTED OR NOT REDACTED.

02:03PM 17 HE -- I COULDN'T GET IT BEFORE CLOSE, BUT HE DID PROMISE

02:03PM 18 ME ON THIS PHONE CALL THAT I WOULD GET IT -- HAVE SOMETHING

02:03PM 19 AFTER CLOSE, AND I NEVER DID.

02:03PM 20 Q. YOU NEVER GOT SOMETHING EVEN AFTER THE CLOSE?

02:03PM 21 A. NO.

02:03PM 22 Q. OKAY. LET'S LOOK AT EXHIBIT 2146.

02:04PM 23 DO YOU HAVE THAT IN FRONT OF YOU?

02:04PM 24 A. YES.

02:04PM 25 Q. IS THIS AN EMAIL EXCHANGE BETWEEN YOU AND MR. TUBERGEN

02:04PM 1 AROUND THE TIME OF YOUR PHONE CALL WITH MR. BALWANI?

02:04PM 2 A. YES.

02:04PM 3 Q. AND DID YOU SEND THIS EMAIL IN THE ORDINARY COURSE OF

02:04PM 4 RDV'S BUSINESS?

02:04PM 5 A. YES.

02:04PM 6 Q. AND WAS IT IMPORTANT FOR YOU TO BE TRUTHFUL WITH

02:04PM 7 MR. TUBERGEN REGARDING THE STATUS OF THE CLOSE?

02:04PM 8 A. YES.

02:04PM 9 Q. AND WAS THIS MAINTAINED IN THE ORDINARY COURSE OF RDV'S

02:04PM 10 BUSINESS?

02:04PM 11 A. YES.

02:04PM 12 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

02:04PM 13 EXHIBIT 2146.

02:04PM 14 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

02:04PM 15 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:04PM 16 (GOVERNMENT'S EXHIBIT 2146 WAS RECEIVED IN EVIDENCE.)

02:04PM 17 MR. LEACH: IF WE CAN ZOOM IN, PLEASE, MS. WACHS, ON

02:04PM 18 THE BOTTOM PORTION.

02:04PM 19 Q. THERE'S AN EMAIL FROM YOU, MS. PETERSON, WHERE YOU WROTE,

02:04PM 20 "SPOKE TO SUNNY."

02:05PM 21 DO YOU SEE THAT?

02:05PM 22 A. YES.

02:05PM 23 Q. IS THAT A REFERENCE TO THE PHONE CALL THAT YOU JUST

02:05PM 24 TESTIFIED TO WITH MR. BALWANI?

02:05PM 25 A. YES.

02:05PM 1 Q. OKAY. YOU WROTE, "THEIR GOAL IS TO HAVE ALL DOCS IN AS
02:05PM 2 SOON AS POSSIBLE THIS WEEK AND \$\$\$ FROM ALL INVESTORS NO LATER
02:05PM 3 THAN FRIDAY. THEY ARE CAPPING THE FUND RAISE AT 500M AND
02:05PM 4 EXPECT IT TO COME FROM 5-8 ENTITIES. THEY HAVE MUCH MORE
02:05PM 5 DEMAND THAN 500M BUT WANT TO CAP IT AT 500M. ONLY WAY THEY
02:05PM 6 TAKE MORE THAN 500M IS 'IF SOMEONE IS EXTREMELY DISGRUNTLED AND
02:05PM 7 COMPLAINED TO A BOARD MEMBER OR SOMETHING.'"
02:05PM 8 DO YOU SEE THAT?
02:05PM 9 A. YES.
02:05PM 10 Q. AND WHAT WERE YOU GETTING AT THERE?
02:05PM 11 A. I WANTED TO GET A GOOD UNDERSTANDING OF WHAT THEY WERE
02:05PM 12 GOING TO DO WITH THE CASH AND HOW MUCH CASH THEY WERE GOING TO
02:05PM 13 GET IN, BECAUSE HOW MUCH CASH THEY BRING IN TELLS ME HOW MUCH
02:05PM 14 MY 100 MILLION IS OF THE TOTAL. SO THAT WAS IMPORTANT TO ME.
02:06PM 15 AND THE FACT THAT THEY WERE CAPPING IT AT 500, I WAS GLAD
02:06PM 16 ABOUT THAT BECAUSE I DID NOT WANT THEM RAISING A BILLION
02:06PM 17 DOLLARS OR WHATEVER BECAUSE THAT JUST MEANS WE OWN LESS.
02:06PM 18 SO IT WAS GOOD TO HAVE AN UNDERSTANDING OF THAT.
02:06PM 19 Q. IN THE NEXT PARAGRAPH IT SAYS, "THEY ARE PLANNING ON OUR
02:06PM 20 100M. I TOLD HIM OUR DOCS WOULD BE IN BY TOMORROW."
02:06PM 21 YOU THEN CONTINUE.
02:06PM 22 "I ASKED IF THEY WERE PLANNING TO CASH SOME EXISTING
02:06PM 23 INVESTORS OUT RIGHT AWAY AND HE INDICATED THAT THEY HAVE NO
02:06PM 24 IMMEDIATE NEED FOR THE MONEY, THAT IT INITIALLY WILL JUST SIT
02:06PM 25 ON THE B/S."

02:06PM 1 DO YOU SEE THAT?

02:06PM 2 A. YES.

02:06PM 3 Q. AND IS B/S BALANCE SHEET?

02:06PM 4 A. YES.

02:06PM 5 Q. AND IS THIS ACCURATELY SUMMARIZING WHAT MR. BALWANI TOLD

02:06PM 6 YOU?

02:06PM 7 A. YES.

02:06PM 8 Q. AND WAS THIS RELEVANT TO YOU?

02:06PM 9 A. YES, IT WAS VERY RELEVANT.

02:06PM 10 Q. WHY?

02:06PM 11 A. BECAUSE WE HAD ORIGINALLY BEEN TOLD IN THE MEETING IN

02:07PM 12 PALO ALTO A COUPLE WEEKS EARLIER THAT THEY WERE GOING TO USE

02:07PM 13 SOME OF THE MONEY, NOT ALL OF IT, BUT SOME OF THE MONEY TO CASH

02:07PM 14 OUT SOME EXISTING INVESTORS, SO I WAS SURPRISED THAT THERE WAS

02:07PM 15 NO IMMEDIATE NEED FOR THE CASH.

02:07PM 16 Q. IN THE LAST PARAGRAPH YOU WROTE, "I ASKED WHEN WE SHOULD

02:07PM 17 CHECK BACK WITH THEM AGAIN ON ANY UPDATES AND HE SAID THEY

02:07PM 18 WOULD REACH OUT AT A MINIMUM ANNUALLY, BUT THEIR GOAL IS TO

02:07PM 19 MEET MUCH MORE OFTEN THAN THAT. THIS GROUP OF INVESTORS IS

02:07PM 20 MUCH MORE STRATEGIC AND THEY WANT TO TAP INTO THAT MORE OFTEN

02:07PM 21 THAN ANNUALLY."

02:07PM 22 DO YOU SEE THAT LANGUAGE?

02:07PM 23 A. YES.

02:07PM 24 Q. AND IS THAT A FAIR SUMMARY OF WHAT MR. BALWANI SAID?

02:07PM 25 A. YES.

02:07PM 1 Q. AND DID THOSE LESS THAN ANNUAL MEETINGS EVEN HAPPEN?

02:07PM 2 A. NO.

02:07PM 3 Q. "HE WAS TALKING ABOUT THEM COMING TO G.R." -- WHAT DOES

02:07PM 4 G.R. REFER TO?

02:07PM 5 A. TO GRAND RAPIDS.

02:07PM 6 Q. -- "TO HOPEFULLY TAP INTO DOUG/AMWAY MANAGEMENT TO LEARN

02:08PM 7 MORE ABOUT GOING GLOBAL. NOT SURE HOW MUCH INTERACTION THERE

02:08PM 8 WILL BE WITH OTHER INVESTORS, WE'LL HAVE TO WAIT AND SEE."

02:08PM 9 AND THEN IT SAYS, "AT LEAST INITIALLY, HE WAS CLEAR THAT

02:08PM 10 THEY AREN'T PLANNING TO PUT ANY UPDATES OR FINANCIAL

02:08PM 11 INFORMATION IN WRITING FOR CONFIDENTIALITY PURPOSES."

02:08PM 12 DO YOU SEE THAT?

02:08PM 13 A. YES.

02:08PM 14 Q. IS THAT WHAT MR. BALWANI TOLD YOU?

02:08PM 15 A. YES.

02:08PM 16 Q. WAS THAT USUAL, UNUSUAL?

02:08PM 17 A. UNUSUAL.

02:08PM 18 Q. HOW SO?

02:08PM 19 A. NORMALLY THERE'S NO -- I MEAN, WE'VE ALREADY SIGNED A

02:08PM 20 CONFIDENTIALITY AGREEMENT. WE'RE AN INVESTOR. NORMALLY

02:08PM 21 COMPANIES DON'T HAVE AN ISSUE SHARING FINANCIAL INFORMATION.

02:08PM 22 Q. JUST TWO MORE DOCUMENTS, MS. PETERSON.

02:08PM 23 I'D LIKE TO DRAW YOUR ATTENTION TO WHAT HAS BEEN MARKED AS

02:08PM 24 2166.

02:09PM 25 DO YOU RECOGNIZE THIS?

02:09PM 1 A. YES.

02:09PM 2 Q. AND WHAT IS THIS?

02:09PM 3 A. THIS IS A FORMAL INVESTMENT MEMO THAT I DO TO THE

02:09PM 4 INVESTMENT COMMITTEE THAT GETS SIGNED TO APPROVE THE

02:09PM 5 INVESTMENT.

02:09PM 6 Q. DO YOU RECOGNIZE THE SIGNATURES ON PAGE 7?

02:09PM 7 A. YES.

02:09PM 8 Q. DID YOU PREPARE THIS IN THE ORDINARY COURSE OF RDV'S

02:09PM 9 BUSINESS?

02:09PM 10 A. YES.

02:09PM 11 Q. DID YOU PREPARE THIS AT -- OR FROM INFORMATION AT THE TIME

02:09PM 12 YOU PREPARED THIS?

02:09PM 13 A. YES.

02:09PM 14 Q. AND DID YOU MAINTAIN THIS IN THE ORDINARY COURSE OF RDV'S

02:09PM 15 BUSINESS?

02:09PM 16 A. YES.

02:09PM 17 Q. DOES THIS ESSENTIALLY MEMORIALIZE THE REASONS FOR THE

02:09PM 18 INVESTMENT?

02:09PM 19 A. YES, AND THE STRENGTHS AND WEAKNESSES, YES.

02:09PM 20 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

02:09PM 21 EXHIBIT 2166.

02:09PM 22 MR. COOPERSMITH: 802, YOUR HONOR.

02:09PM 23 THE COURT: THIS IS A BUSINESS RECORD?

02:09PM 24 MR. LEACH: YES, YOUR HONOR.

02:09PM 25 THE COURT: IT'S ADMITTED UNDER 803(6).

02:10PM 1 IT MAY BE PUBLISHED.

02:10PM 2 (GOVERNMENT'S EXHIBIT 2166 WAS RECEIVED IN EVIDENCE.)

02:10PM 3 BY MR. LEACH:

02:10PM 4 Q. MS. PETERSON, I DRAW YOUR ATTENTION TO THE TOP PORTION OF

02:10PM 5 THE DOCUMENT.

02:10PM 6 DO YOU SEE WHERE IT SAYS, "RDV APPROVAL DOCUMENT -- NEW

02:10PM 7 EQUITY INVESTMENT.

02:10PM 8 "DIRECT INVESTMENT: THERANOS INC."

02:10PM 9 DO YOU SEE THAT?

02:10PM 10 A. YES.

02:10PM 11 Q. AND IS THIS A FORM THAT YOU USE ORDINARILY IN YOUR

02:10PM 12 BUSINESS?

02:10PM 13 A. YES.

02:10PM 14 Q. OKAY. TO THE RIGHT IT SAYS, "CLOSED: OCTOBER 31ST,

02:10PM 15 2014."

02:10PM 16 IS THAT CONSISTENT WITH WHEN THE TRANSACTION CLOSED?

02:10PM 17 A. YES.

02:10PM 18 Q. THERE'S A SECTION RDV OPPORTUNITY, AND THEN ANOTHER

02:10PM 19 SECTION COMPANY OVERVIEW.

02:10PM 20 DO YOU SEE THAT?

02:10PM 21 A. YES.

02:10PM 22 Q. AND IS SOME OF THE INFORMATION IN HERE DRAWN FROM THE MEMO

02:10PM 23 THAT YOU PREPARED EARLIER?

02:10PM 24 A. YES.

02:10PM 25 Q. OKAY. FOR EXAMPLE, YOU WROTE, "THERANOS MANUFACTURES ITS

02:10PM 1 ANALYZER EQUIPMENT."

02:10PM 2 DO YOU SEE THAT IN THE SECOND PARAGRAPH?

02:10PM 3 A. YES.

02:10PM 4 Q. AND IS THAT CONSISTENT WITH WHAT MS. HOLMES AND

02:11PM 5 MR. BALWANI TOLD YOU?

02:11PM 6 A. YES.

02:11PM 7 Q. IF WE GO TO THE NEXT PAGE, PLEASE.

02:11PM 8 DO YOU SEE THERE'S A FINANCIAL SUMMARY?

02:11PM 9 A. YES.

02:11PM 10 Q. AND IS THE DATA IN HERE DRAWN FROM THE SPREADSHEET THAT WE

02:11PM 11 SAW IN 1853 AS INFORMED BY YOUR CONVERSATION WITH MR. BALWANI

02:11PM 12 AND MS. HOLMES?

02:11PM 13 A. YES.

02:11PM 14 Q. TO THE FAR RIGHT THERE ARE SOME FINANCIAL NOTES?

02:11PM 15 A. YES.

02:11PM 16 Q. WHERE DOES THIS INFORMATION COME FROM?

02:11PM 17 A. THAT ALL CAME FROM THE CONVERSATION IN PALO ALTO.

02:11PM 18 Q. OKAY. AND SO I SEE IN THE SECOND BULLET, "2015 ASSUMES

02:11PM 19 THEY OPEN APPROXIMATELY 1,200 LOCATIONS ACROSS WALGREENS AND

02:11PM 20 SAFEWAY."

02:11PM 21 DO YOU SEE THAT?

02:11PM 22 A. YES.

02:11PM 23 Q. AND THAT'S INFORMATION THAT MR. BALWANI PROVIDED YOU?

02:11PM 24 A. YES.

02:11PM 25 Q. IF WE CAN GO TO PAGE 5.

02:12PM 1 DO YOU SEE THAT THERE'S A DESCRIPTION OF THE CURRENT BOARD
02:12PM 2 OF DIRECTORS?
02:12PM 3 A. YES.
02:12PM 4 Q. AND THERE'S AN ENTRY FOR MR. BALWANI WHERE IT SAYS,
02:12PM 5 "PRESIDENT AND COO OF THERANOS: ENTREPRENEUR AND COMPUTER
02:12PM 6 SCIENTIST; JOINED THERANOS AFTER DROPPING OUT OF THE COMPUTER
02:12PM 7 SCIENCE PROGRAM AT STANFORD UNIVERSITY."
02:12PM 8 AND THEN IT CONTINUES.
02:12PM 9 DO YOU SEE THAT?
02:12PM 10 A. YES.
02:12PM 11 Q. PRIOR TO THE END OF 2015, DID YOU HAVE ANY UNDERSTANDING
02:12PM 12 THAT MS. HOLMES AND MR. BALWANI WAS IN A ROMANTIC RELATIONSHIP?
02:12PM 13 A. NO.
02:12PM 14 MR. COOPERSMITH: OBJECTION, YOUR HONOR. THE SAME
02:12PM 15 REASONS THAT WE DISCUSSED EARLIER.
02:12PM 16 THE COURT: OVERRULED.
02:12PM 17 YOUR ANSWER?
02:12PM 18 THE WITNESS: NO.
02:12PM 19 BY MR. LEACH:
02:12PM 20 Q. THEY NEVER TOLD YOU THAT?
02:12PM 21 A. NO.
02:12PM 22 Q. WOULD THAT HAVE BEEN RELEVANT TO THE INVESTMENT DECISION?
02:12PM 23 A. I THINK IT WOULD HAVE SPURRED A LOT OF DISCUSSION NOT ONLY
02:13PM 24 AMONGST OURSELVES, BUT ALSO WITH THEM AT THE -- IN PALO ALTO.
02:13PM 25 IT'S FRAUGHT WITH CONFLICT, SO I THINK WE WOULD HAVE

02:13PM 1 WANTED TO DISCUSS THAT AT LENGTH.

02:13PM 2 Q. WHEN YOU SAY "IT'S FRAUGHT WITH CONFLICT," WHAT DO YOU

02:13PM 3 MEAN?

02:13PM 4 A. ANY TIME YOU HAVE A FAMILY MEMBER OR A SPOUSE OR SIBLING,

02:13PM 5 OR WHOMEVER, IN A BUSINESS AND WE'RE MAKING AN INVESTMENT, YOU

02:13PM 6 WANT TO MAKE SURE THAT THE PEOPLE YOU'RE INVESTING WITH ARE

02:13PM 7 MAKING SOUND BUSINESS DECISIONS, NOT EMOTIONAL DECISIONS.

02:13PM 8 SO I'M NOT SAYING THAT THAT'S WHAT WOULD HAVE HAPPENED,

02:13PM 9 BUT I THINK WE WOULD HAVE HAD A LOT OF DISCUSSION AROUND THAT

02:13PM 10 AS A GROUP AMONGST OURSELVES, AS WELL AS WITH THEM, WHETHER --

02:13PM 11 COULD WE IDENTIFY -- WERE THERE CONFLICTS, AND DID WE HAVE THE

02:14PM 12 RIGHT PEOPLE IN THE RIGHT SEATS AT THIS COMPANY TO MAKE THIS

02:14PM 13 LARGE OF AN INVESTMENT.

02:14PM 14 Q. LET ME DRAW YOUR ATTENTION, PLEASE, TO PAGE 6.

02:14PM 15 DO YOU SEE WHERE IT SAYS, "A THERANOS ANALYZER STATION IS

02:14PM 16 A SMALL FRACTION OF THE SIZE OF A CURRENT LAB"?

02:14PM 17 A. YES.

02:14PM 18 Q. OKAY. PRIOR TO THE INVESTMENT, WERE YOU EVER TOLD THAT

02:14PM 19 THERANOS WAS USING THIRD PARTY MACHINES TO DO SOME OF ITS

02:14PM 20 TESTING?

02:14PM 21 A. NO, NEVER.

02:14PM 22 Q. WERE YOU EVER TELL TOLD THAT THEY WERE USING THIRD PARTY

02:14PM 23 MACHINES TO DO THE MAJORITY OF ITS TESTING?

02:14PM 24 A. NO.

02:14PM 25 Q. PRIOR TO THE INVESTMENT, WERE YOU EVER TOLD THAT THERANOS

02:14PM 1 WAS USING ITS ANALYZER FOR NO MORE THAN 12 ASSAYS?

02:14PM 2 A. NO.

02:14PM 3 Q. WOULD THAT HAVE BEEN IMPORTANT TO YOU?

02:14PM 4 A. VERY, YES.

02:14PM 5 Q. LET'S LOOK AT EXHIBIT 5808.

02:15PM 6 IS THIS A COPY OF THE WIRE TRANSFER FOR RDV'S INVESTMENT?

02:15PM 7 A. YES.

02:15PM 8 Q. AND DOES THIS ACCURATELY REFLECT THE DATES AND DETAILS OF

02:15PM 9 RDV'S INVESTMENT?

02:15PM 10 A. YES.

02:15PM 11 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

02:15PM 12 EXHIBIT 5808.

02:15PM 13 MR. COOPERSMITH: ONE MOMENT, YOUR HONOR.

02:15PM 14 (PAUSE IN PROCEEDINGS.)

02:15PM 15 MR. COOPERSMITH: NO OBJECTION.

02:15PM 16 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:15PM 17 (GOVERNMENT'S EXHIBIT 5808 WAS RECEIVED IN EVIDENCE.)

02:15PM 18 BY MR. LEACH:

02:15PM 19 Q. MS. PETERSON, UP IN THE LEFT CORNER THERE'S A DATE,

02:15PM 20 OCTOBER 31ST, 2014.

02:15PM 21 DO YOU SEE THAT?

02:15PM 22 A. YES.

02:15PM 23 Q. AND DOWN IN ROUGHLY THE MIDDLE, THERE'S AN AMOUNT RECEIVED

02:16PM 24 OF \$99,999,984.

02:16PM 25 DO YOU SEE THAT?

02:16PM 1 A. YES.

02:16PM 2 Q. IS THAT THE AMOUNT OF RDV'S INVESTMENT?

02:16PM 3 A. YES.

02:16PM 4 Q. OKAY. THERE'S AN ORIGINATOR FOR THIS WIRE LISTED AS

02:16PM 5 LAKESHORE CAPITAL.

02:16PM 6 WHAT IS THAT?

02:16PM 7 A. A CASH ACCOUNT OF THE DEVOS FAMILY.

02:16PM 8 Q. OKAY. AND THEN THERE'S AN ORIGINATOR'S BANK,

02:16PM 9 GRAND RAPIDS, MICHIGAN.

02:16PM 10 DO YOU SEE THAT?

02:16PM 11 A. YES.

02:16PM 12 Q. AND IS THAT WHERE RDV MAINTAINED BANK ACCOUNTS?

02:16PM 13 A. THROUGH NORTHERN TRUST, WHICH WAS HEADQUARTERED IN

02:16PM 14 CHICAGO.

02:16PM 15 Q. OKAY. AND THERE'S AN ENTITY FOR THE BENEFICIARY -- OR FOR

02:16PM 16 THE REFERENCE TO THE BENEFICIARY LISTED AS DYNASTY FINANCIAL II

02:16PM 17 LLC.

02:16PM 18 DO YOU SEE THAT?

02:16PM 19 A. YES.

02:16PM 20 Q. AND WHAT IS THAT?

02:16PM 21 A. THAT'S THE INVESTMENT ENTITY THAT WE USED.

02:17PM 22 Q. AT ANY POINT IN TIME, DID RDV RECOVER ITS \$99 MILLION?

02:17PM 23 A. NO.

02:17PM 24 MR. LEACH: YOUR HONOR, MAY I HAVE A MOMENT?

02:17PM 25 THE COURT: YES.

02:17PM 1 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

02:17PM 2 BY MR. LEACH:

02:17PM 3 Q. JUST A FEW MORE QUESTIONS, MS. PETERSON.

02:17PM 4 IF WE CAN GO BACK TO EXHIBIT 5809.

02:17PM 5 YOUR HONOR, I'D LIKE TO MAKE SURE -- I'M OFFERING THE

02:17PM 6 ENTIRE EMAIL, BOTH THE EXHIBIT AND THE ATTACHMENT.

02:17PM 7 THE COURT: YES, THERE WAS -- THANK YOU FOR THIS. I

02:17PM 8 HAD A NOTE TO THIS.

02:18PM 9 I NOTICE THERE WAS SOME CONVERSATION ABOUT PAGE 1 AND THE

02:18PM 10 COURT ADMITTED PAGE 1 AND SAID IT MAY BE PUBLISHED, AND THEN

02:18PM 11 PAGE 2 WAS ACTUALLY PUBLISHED.

02:18PM 12 THE ENTIRETY OF THE DOCUMENT WAS ADMITTED.

02:18PM 13 MR. LEACH: I APOLOGIZE, YOUR HONOR. I INTENDED TO

02:18PM 14 MOVE THE ENTIRETY OF THE DOCUMENT.

02:18PM 15 THE COURT: AND THAT WAS THE COURT'S UNDERSTANDING,

02:18PM 16 THAT THE ENTIRETY OF THE DOCUMENT WAS ADMITTED. IT WAS

02:18PM 17 PUBLISHED.

02:18PM 18 MR. COOPERSMITH: YES, YOUR HONOR, I UNDERSTAND.

02:18PM 19 THE COURT: OKAY. THANK YOU. SO THE RECORD IS

02:18PM 20 CLEAR, IT WAS ADMITTED, BOTH PAGES.

02:18PM 21 BY MR. LEACH:

02:18PM 22 Q. OKAY. AND IF WE CAN GO BACK, PLEASE TO EXHIBIT 1944.

02:18PM 23 MS. PETERSON, DO YOU RECALL PAGE 1 OF THIS DOCUMENT, THE

02:18PM 24 EMAIL FROM MR. TUBERGEN ATTACHING THE ROGER PARLOFF ARTICLE?

02:18PM 25 A. HANG ON.

02:18PM 1 19? OR THERE IT IS, SORRY.

02:18PM 2 YES.

02:18PM 3 Q. AND THE ARTICLE IS SOMETHING THAT YOU REVIEWED IN

02:19PM 4 CONNECTION WITH THE INVESTMENT DECISION?

02:19PM 5 A. YES.

02:19PM 6 Q. AND BASED ON THE DUE DILIGENCE MATERIALS THAT WE LOOKED

02:19PM 7 THROUGH, DID YOU UNDERSTAND THERANOS WAS REFERRING YOU TO THAT

02:19PM 8 ARTICLE?

02:19PM 9 A. YES.

02:19PM 10 Q. AND WAS THAT PART OF THE REASON WHY YOU PLACED WEIGHT ON

02:19PM 11 IT?

02:19PM 12 A. YES.

02:19PM 13 MR. LEACH: YOUR HONOR, AT THIS TIME I OFFER THE

02:19PM 14 ENTIRETY OF EXHIBIT 1944.

02:19PM 15 THE COURT: ARE YOU OFFERING THE ARTICLE THAT IS

02:19PM 16 ATTACHED FOR THE TRUTH OF THE MATTER ASSERTED IN THAT ARTICLE?

02:19PM 17 MR. LEACH: NO, YOUR HONOR.

02:19PM 18 THE COURT: WHAT IS THE PURPOSE OF IT, OR WHAT DO

02:19PM 19 YOU SEEK TO ADMIT THEN?

02:20PM 20 MR. LEACH: I SEEK TO ADMIT IT FOR THE FALSITY OF

02:20PM 21 CERTAIN OF THE STATEMENTS.

02:20PM 22 IN ADDITION, THIS IS PART OF THE BASIS OF RDV'S

02:20PM 23 INVESTMENT, BUT I'M NOT OFFERING IT FOR THE TRUTH OF THE

02:20PM 24 STATEMENTS IN THE ARTICLE.

02:20PM 25 THE COURT: ALL RIGHT.

02:20PM 1 AND YOU WISH TO LODGE AN OBJECTION?

02:20PM 2 MR. COOPERSMITH: FOR THE REASONS WE DISCUSSED

02:20PM 3 EARLIER, YOUR HONOR, YES.

02:20PM 4 THE COURT: ALL RIGHT. THANK YOU. THANK YOU.

02:20PM 5 LADIES AND GENTLEMEN, THIS WILL BE ADMITTED OVER COUNSEL'S

02:20PM 6 OBJECTION.

02:20PM 7 HOWEVER, THIS -- THAT IS, THE ARTICLE THAT IS ATTACHED TO

02:20PM 8 1944 -- IS NOT OFFERED FOR THE TRUTH OF THE MATTER ASSERTED IN

02:20PM 9 THE ARTICLE, WHICH IS TO SAY IT'S NOT OFFERED FOR THE TRUTH OF

02:20PM 10 THE AUTHOR'S STATEMENT, NOR ANYONE THAT THE AUTHOR QUOTES IN

02:20PM 11 THE ARTICLE.

02:20PM 12 IT'S OFFERED, IS OFFERED RATHER, NOT FOR THE TRUTH BUT, AS

02:20PM 13 MR. LEACH HAS INDICATED, FOR ANY FALSE ISSUES REGARDING

02:20PM 14 FALSITY, NOT THE TRUTH.

02:20PM 15 DOES THAT CAPTURE THE REASON THAT YOU'RE INTRODUCING THIS,

02:20PM 16 MR. LEACH?

02:20PM 17 MR. LEACH: IT DOES, YOUR HONOR. THANK YOU.

02:20PM 18 THE COURT: ALL RIGHT. FOR THAT LIMITED PURPOSE

02:20PM 19 ONLY, LADIES AND GENTLEMEN.

02:20PM 20 (GOVERNMENT'S EXHIBIT 1944 WAS RECEIVED IN EVIDENCE.)

02:20PM 21 MR. LEACH: AND IF I MAY DISPLAY, YOUR HONOR?

02:20PM 22 THE COURT: YES.

02:20PM 23 BY MR. LEACH:

02:20PM 24 Q. MS. PETERSON, DO YOU SEE THE CAPTION OF THIS ARTICLE IS

02:20PM 25 "NEW BLOOD."

02:20PM 1 A. YES.

02:20PM 2 Q. AND DO YOU SEE THE AUTHOR OF THIS IS ROGER PARLOFF?

02:21PM 3 A. YES.

02:21PM 4 Q. AND IF WE LOOK AT PAGE 4, DO YOU SEE AN IMAGE OF

02:21PM 5 MS. HOLMES?

02:21PM 6 A. YES.

02:21PM 7 Q. LET'S LOOK BRIEFLY, PLEASE, AT PAGE 8 OF THE EXHIBIT. IF

02:21PM 8 WE CAN ZOOM IN ON THE SECOND OR THE THIRD FULL PARAGRAPH ON THE

02:21PM 9 LEFT HAND COLUMN.

02:21PM 10 DO YOU SEE WHERE IT SAYS, "THERANOS, WHICH DOES NOT BUY

02:21PM 11 ANY ANALYZERS FROM THIRD PARTIES, IS THEREFORE IN A UNIQUE

02:21PM 12 POSITION. WHILE IT WOULD NEED FDA APPROVAL TO SELL ITS OWN

02:21PM 13 ANALYZERS TO OTHER LABS, IT DOESN'T DO THAT. IT USES ITS

02:21PM 14 ANALYZERS ONLY IN ITS OWN CMS CERTIFIED LAB."

02:21PM 15 DO YOU SEE THAT LANGUAGE?

02:21PM 16 A. YES.

02:21PM 17 Q. AND WAS THIS INFORMATION RELEVANT TO YOU?

02:21PM 18 A. YES.

02:21PM 19 Q. AND WAS THIS INFORMATION CONSISTENT WITH WHAT MS. HOLMES

02:21PM 20 AND MR. BALWANI TOLD YOU IN THE MEETING IN PALO ALTO?

02:21PM 21 A. YES.

02:22PM 22 MR. LEACH: THANK YOU, YOUR HONOR.

02:22PM 23 I HAVE NOTHING FURTHER.

02:22PM 24 THE COURT: CROSS-EXAMINATION?

02:22PM 25 FOLKS, AGAIN, IF YOU WANT TO STRETCH, FEEL FREE TO DO

02:22PM 1 THAT.

02:22PM 2 AS I SAID, WE'LL END AT 2:45.

02:22PM 3 MR. COOPERSMITH, WE CAN GO UNTIL 3:00 O'CLOCK AND BE FINE,

02:22PM 4 JUST TO GET YOU STARTED.

02:22PM 5 MR. COOPERSMITH: OKAY, YOUR HONOR. THANK YOU.

02:22PM 6 **CROSS-EXAMINATION**

02:22PM 7 BY MR. COOPERSMITH:

02:22PM 8 Q. GOOD AFTERNOON, MS. PETERSON.

02:22PM 9 A. HI.

02:22PM 10 Q. MY NAME IS JEFF COOPERSMITH, AND I REPRESENT MR. BALWANI.

02:22PM 11 OKAY?

02:22PM 12 AND FOR THE REMAINDER OF THE AFTERNOON, I'LL ASK YOU SOME

02:23PM 13 QUESTIONS TO FOLLOW UP ON SOME THINGS THAT MR. LEACH ASKED YOU.

02:23PM 14 OKAY?

02:23PM 15 A. OKAY.

02:23PM 16 Q. AND UNFORTUNATELY IT'S PROBABLY GOING TO BE THE CASE THAT

02:23PM 17 YOU'LL BE BACK TOMORROW.

02:23PM 18 A. OKAY.

02:23PM 19 Q. SO SORRY ABOUT THAT, BUT THAT'S HOW IT GOES. OKAY?

02:23PM 20 MS. PETERSON, I UNDERSTAND THAT YOU WORKED FOR, OR YOU

02:23PM 21 STILL WORK FOR RDV ACTUALLY; RIGHT?

02:23PM 22 A. CORRECT.

02:23PM 23 Q. AND YOU'VE WORKED THERE FOR 17 YEARS I THINK YOU SAID?

02:23PM 24 A. YES.

02:23PM 25 Q. AND SO YOU HAD CONSIDERABLE FAMILIARITY WITH RDV AND ITS

02:23PM 1 OPERATIONS?

02:23PM 2 A. YES.

02:23PM 3 Q. AND I JUST WANT TO MAKE SURE THAT WE UNDERSTAND WHAT RDV

02:23PM 4 IS.

02:23PM 5 I THINK RDV -- ARE THOSE THE INITIALS OF RICHARD DEVOS?

02:23PM 6 A. YES.

02:23PM 7 Q. AND IS HE THE FOUNDER OF AMWAY?

02:23PM 8 A. YES, COFOUNDER.

02:23PM 9 Q. THE COFOUNDER OF AMWAY?

02:23PM 10 A. YES.

02:23PM 11 Q. AND THAT'S A COMPANY THAT IS BASED IN GRAND RAPIDS,

02:23PM 12 MICHIGAN?

02:23PM 13 A. YES.

02:23PM 14 Q. AND THE AMWAY BUSINESS, DOES IT STILL EXIST?

02:24PM 15 A. YES.

02:24PM 16 Q. AND THAT BUSINESS GENERATED BASICALLY A FORTUNE FOR THE

02:24PM 17 DEVOS FAMILY; IS THAT RIGHT?

02:24PM 18 A. YES.

02:24PM 19 Q. OKAY. AND WHEN YOU JOINED RDV, WAS AMWAY AN ALREADY GOING

02:24PM 20 BUSINESS?

02:24PM 21 A. A GROWING OR?

02:24PM 22 Q. WAS IT ALREADY GOING ON?

02:24PM 23 A. YES.

02:24PM 24 Q. IT HAD ALREADY BEEN FOUNDED BEFORE YOU GOT THERE?

02:24PM 25 A. YES. IT'S BEEN FOUNDED FOR 50 YEARS, 60 YEARS.

02:24PM 1 Q. OKAY. AND IT STILL OPERATES TODAY; RIGHT?

02:24PM 2 A. YES.

02:24PM 3 Q. IS RICHARD DEVOS STILL WITH US?

02:24PM 4 A. NO.

02:24PM 5 Q. SORRY ABOUT THAT.

02:24PM 6 DID YOU KNOW HIM PERSONALLY?

02:24PM 7 A. YES.

02:24PM 8 Q. OKAY. AND WITHIN THE FAMILY, THERE ARE GENERATIONS OF

02:24PM 9 FAMILY MEMBERS; IS THAT RIGHT?

02:24PM 10 A. YES.

02:24PM 11 Q. AND SOME OF THEM ARE INVOLVED WITH THE BUSINESS?

02:24PM 12 A. NOT ANYMORE.

02:24PM 13 Q. OKAY. BUT THERE ARE SOME FAMILY MEMBERS WHO ARE INVOLVED

02:24PM 14 WITH THE RDV INVESTMENT BUSINESS?

02:24PM 15 A. THEY'RE ONLY ON OUR INVESTMENT COMMITTEE.

02:24PM 16 THEY'RE NOT -- THERE'S NO EMPLOYEES AT RDV THAT ARE

02:24PM 17 DEVOS FAMILY MEMBERS.

02:25PM 18 Q. OKAY. BUT THE INVESTMENT COMMITTEE IS A GROUP OF FAMILY

02:25PM 19 MEMBERS?

02:25PM 20 A. YES.

02:25PM 21 Q. AND AT THE TIME OF THE INVESTMENT THAT YOU DISCUSSED WITH

02:25PM 22 MR. LEACH IN OCTOBER OF 2014, WAS DICK DEVOS ON THE INVESTMENT

02:25PM 23 COMMITTEE?

02:25PM 24 A. YES.

02:25PM 25 Q. AND RICK DEVOS?

02:25PM 1 A. YES.

02:25PM 2 Q. AND DAN DEVOS?

02:25PM 3 A. YES.

02:25PM 4 Q. AND DOUG DEVOS?

02:25PM 5 A. YES. DOUG WAS THE CHAIRMAN.

02:25PM 6 Q. OKAY.

02:25PM 7 A. I'M NOT SURE IF DICK WAS ON THE INVESTMENT COMMITTEE AT

02:25PM 8 THAT TIME OR RICK WAS HIS REPRESENTATIVE. IT CHANGES A LOT.

02:25PM 9 THEY PUT DIFFERENT FAMILY MEMBERS ON IT ON OCCASION.

02:25PM 10 Q. IT'S SORT OF A ROTATING GROUP OF FAMILY MEMBERS?

02:25PM 11 A. YES, SOMEWHAT.

02:25PM 12 Q. BUT THOSE WERE THE MEMBERS OF THE INVESTMENT COMMITTEE,

02:25PM 13 WHOEVER HAPPENS TO BE ON IT AT ANY GIVEN TIME, THOSE ARE

02:25PM 14 ACTUALLY THE PEOPLE WHO MAKE THE INVESTMENT DECISIONS FOR RDV;

02:25PM 15 IS THAT RIGHT?

02:25PM 16 A. YES. NOT ALL OF THEM.

02:25PM 17 Q. I'M SORRY?

02:25PM 18 A. NOT ALL OF THEM.

02:25PM 19 Q. NOT ALL OF THEM?

02:25PM 20 A. NO. THEY APPROVE THE PRIVATE EQUITY GROUPS THAT WE INVEST

02:26PM 21 WITH, AND JERRY TUBERGEN AND NOW RANDY DAMSTRA HAVE AUTHORITY

02:26PM 22 TO APPROVE CERTAIN OF THESE COINVESTMENTS UNDERNEATH THERE

02:26PM 23 WITHOUT HAVING TO GO TO AN INVESTMENT COMMITTEE.

02:26PM 24 Q. OKAY.

02:26PM 25 A. BUT THIS PARTICULAR ONE HAD TO BE APPROVED BY THE

02:26PM 1 INVESTMENT COMMITTEE, YES.

02:26PM 2 Q. WHEN YOU SAY "THIS PARTICULAR ONE," YOU MEAN THERANOS?

02:26PM 3 A. YES.

02:26PM 4 Q. OKAY. THAT WAS GOING TO BE MY QUESTION, SO THANK YOU.

02:26PM 5 ALL RIGHT. LET ME MAKE SURE I UNDERSTAND WHO THESE PEOPLE

02:26PM 6 ARE.

02:26PM 7 SO RICK DEVOS, IS HE WHAT YOU CALL A GENERATION 3 FAMILY

02:26PM 8 MEMBER?

02:26PM 9 A. YES, THE OLDEST GRANDSON.

02:26PM 10 Q. SO HE'S A GRANDSON OF RDV, OR RICHARD DEVOS; RIGHT?

02:26PM 11 A. YES.

02:26PM 12 Q. AND THEN DAN DEVOS, IS HE WHAT YOU CALL A GENERATION 2

02:26PM 13 FAMILY MEMBER?

02:26PM 14 A. YES.

02:26PM 15 Q. SO HE WOULD BE A SON OF RICHARD DEVOS?

02:26PM 16 A. YES.

02:26PM 17 Q. AND DOUG DEVOS?

02:26PM 18 A. IS A G2, SON OF RICHARD DEVOS.

02:26PM 19 Q. OKAY. I THINK THE ONE WE DIDN'T MENTION WAS DICK DEVOS;

02:27PM 20 RIGHT?

02:27PM 21 A. CORRECT.

02:27PM 22 Q. AND WHAT WAS HIS RELATIONSHIP TO RICK DEVOS?

02:27PM 23 A. HE'S A G2, A SON OF RICHARD DEVOS.

02:27PM 24 Q. OKAY. YOU ALSO MENTIONED SOMEONE EARLIER IN YOUR

02:27PM 25 TESTIMONY TODAY NAMED CHERI DEVOS; IS THAT RIGHT?

02:27PM 1 A. YES.

02:27PM 2 Q. AND IS SHE RELATED TO RICHARD DEVOS AS WELL?

02:27PM 3 A. YES, SHE'S A DAUGHTER.

02:27PM 4 Q. SO SHE'S A GENERATION 2 FAMILY MEMBER?

02:27PM 5 A. CORRECT.

02:27PM 6 Q. AND I THINK YOU SAID SOME OF THESE PEOPLE FROM THE DEVOS

02:27PM 7 FAMILY WERE ACTUALLY WITH YOU IN PALO ALTO WHEN YOU MET IN

02:27PM 8 OCTOBER 14TH, 2014?

02:27PM 9 A. YES. FOUR FAMILY MEMBERS OF THE G2 FAMILIES WERE

02:27PM 10 REPRESENTED AT THAT MEETING. RICK REPRESENTING DICK -- AND I

02:27PM 11 GUESS DAN WAS NOT THERE, SO CHERI, RICK, AND DOUG WERE THERE.

02:27PM 12 AND DOUG WAS THE CHAIRMAN OF THE INVESTMENT COMMITTEE AT

02:27PM 13 THE TIME.

02:27PM 14 Q. OKAY. AND THESE INVESTMENT COMMITTEE MEMBERS HAD TO BE

02:27PM 15 THERE BECAUSE ULTIMATELY IT WAS THEIR DECISION WHETHER TO

02:27PM 16 INVEST?

02:28PM 17 A. THEY DON'T NORMALLY GO ON A DILIGENCE CALL LIKE THIS ONE,

02:28PM 18 NOT ALWAYS. OFTEN IT'S THE -- THE WORK IS DONE WITHIN THE

02:28PM 19 TEAMS, WITHIN THE INVESTMENT GROUP, AND JERRY PRESENTS IT TO

02:28PM 20 THE INVESTMENT COMMITTEE.

02:28PM 21 Q. OKAY. BUT IN THIS CASE THE MEMBERS OF THE INVESTMENT

02:28PM 22 COMMITTEE WHO WENT TO THE MEETING IN PALO ALTO, THEY WERE ABLE

02:28PM 23 TO TALK TO SUNNY BALWANI AND ELIZABETH HOLMES FIRSTHAND; RIGHT?

02:28PM 24 A. YES.

02:28PM 25 Q. AND THAT WAS ONE THING THAT THEY COULD USE TO HELP GUIDE

02:28PM 1 THEIR DECISION; RIGHT?

02:28PM 2 A. YES.

02:28PM 3 Q. AND YOUR ROLE WAS NOT TO MAKE AN INVESTMENT DECISION;

02:28PM 4 CORRECT?

02:28PM 5 A. CORRECT.

02:28PM 6 Q. AND YOUR ROLE WAS TO REVIEW MATERIALS AND WRITE MEMOS THAT

02:28PM 7 YOU WERE HOPING WOULD BE USED TO ASSESS THE INVESTMENT; RIGHT?

02:28PM 8 A. I WAS THERE TO HELP FACILITATE A TRANSACTION SHOULD THEY

02:28PM 9 CHOOSE TO INVEST. I CERTAINLY -- THEY LISTEN -- JERRY IS NOT

02:29PM 10 ON THE INVESTMENT COMMITTEE EITHER, BUT OUR OPINIONS MATTER TO

02:29PM 11 THEM.

02:29PM 12 BUT, NO, THEY WERE THE ONES WHO VOTE.

02:29PM 13 Q. I MEAN, YOU AT LEAST HOPE YOUR OPINIONS MATTER; RIGHT?

02:29PM 14 A. UH-HUH.

02:29PM 15 Q. BECAUSE YOU WORK THERE?

02:29PM 16 A. I HAVE WORKED THERE AND I'VE BEEN THERE FOR 17 YEARS, YES.

02:29PM 17 Q. RIGHT. SO LET'S TALK ABOUT JERRY TUBERGEN.

02:29PM 18 I THINK YOU SAID HE WAS, AT THE TIME AT LEAST, BOTH THE

02:29PM 19 CHIEF INVESTMENT OFFICER AND THE CHIEF EXECUTIVE OFFICER?

02:29PM 20 A. YES, AND THE PRESIDENT.

02:29PM 21 Q. OF RDV?

02:29PM 22 A. CORRECT.

02:29PM 23 Q. AND HE'S NOT A FAMILY MEMBER?

02:29PM 24 A. CORRECT.

02:29PM 25 Q. AND WOULD YOU DESCRIBE MR. TUBERGEN, JERRY TUBERGEN, AS AN

02:29PM 1 EXPERT IN INVESTMENTS?

02:29PM 2 A. HE'S A VERY GOOD INVESTOR. AN EXPERT, THAT'S SUBJECTIVE,

02:29PM 3 I GUESS.

02:29PM 4 Q. YOU WOULD SAY HE'S A VERY GOOD --

02:29PM 5 A. HE'S A VERY SUCCESSFUL INVESTOR, YES.

02:29PM 6 Q. AND SO YOU WOULD DESCRIBE HIM AS A SAVVY PERSON?

02:29PM 7 A. A SUCCESSFUL INVESTOR, YES.

02:29PM 8 Q. AND SAVVY?

02:29PM 9 A. I THINK HE MAKES VERY GOOD INVESTMENT DECISIONS, YES.

02:29PM 10 Q. OKAY. AND HOW MANY PEOPLE WORK IN YOUR OFFICE AT RDV?

02:30PM 11 A. TODAY ABOUT -- AT RDV CORP., THERE'S ABOUT 140 PEOPLE.

02:30PM 12 IN THE INVESTMENT GROUP, IT'S ABOUT 35.

02:30PM 13 Q. OKAY. HOW ABOUT AT THE TIME OF THE THERANOS INVESTMENT,

02:30PM 14 HOW MANY PEOPLE WORKED THERE, AS BEST YOU CAN TELL US?

02:30PM 15 A. PROBABLY 110 WITHIN RDV CORP., AND IN THE INVESTMENT GROUP

02:30PM 16 PROBABLY 20 TO 25.

02:30PM 17 Q. OKAY. AND ALL OF THOSE PEOPLE WHO WORK FOR RDV, THEIR JOB

02:30PM 18 IS IN SOME WAY TO HELP MANAGE THE INVESTMENTS OF THE RDV?

02:30PM 19 A. THE 20 TO 25 PEOPLE IN THE INVESTMENT GROUP IS THE

02:30PM 20 INVESTMENT PIECE, AND WE UTILIZE BOTH THE TAX DEPARTMENT AND

02:30PM 21 THE ACCOUNTING DEPARTMENT, WHICH ALSO HAVE OTHER ROLES, TOO, IN

02:30PM 22 FAMILY SERVICES.

02:30PM 23 THERE'S A VERY LARGE ACCOUNTING GROUP AND A VERY LARGE TAX

02:30PM 24 GROUP THAT MANAGES THE FAMILY'S WEALTH OUT OF THAT GROUP, AS

02:30PM 25 WELL AS A FOUNDATION AND I.T. SUPPORT AND OTHER THINGS WITHIN

02:31PM 1 RDV CORPORATION.

02:31PM 2 Q. THANK YOU, MS. PETERSON.

02:31PM 3 AND THERANOS WAS JUST ONE OF MANY INVESTMENTS, I'M

02:31PM 4 ASSUMING.

02:31PM 5 A. YES.

02:31PM 6 Q. OKAY. NOW, IN TERMS OF WHO YOU REPORTED TO, YOU REPORTED

02:31PM 7 TO SOMEONE NAMED RANDY DAMSTRA; RIGHT?

02:31PM 8 A. YES.

02:31PM 9 Q. AT THE TIME?

02:31PM 10 A. YES.

02:31PM 11 Q. AND STILL?

02:31PM 12 A. YES.

02:31PM 13 Q. AND WHO IS RANDY DAMSTRA?

02:31PM 14 A. HE AT THE TIME WAS BASICALLY HEAD OF THE INVESTMENT GROUP

02:31PM 15 WHO REPORTED UP TO JERRY TUBERGEN, AND THERE WAS A

02:31PM 16 ROBERT SCHIERBEEK, S-C-H-I-E-R-B-E-E-K, AND HE RAN THE FAMILY

02:31PM 17 SERVICES SIDE OF THE BUSINESS, AND THEY BOTH REPORTED UP AND TO

02:31PM 18 JERRY.

02:31PM 19 Q. OKAY. AND THEN IN TURN, JERRY REPORTED DIRECTLY TO THE

02:31PM 20 FAMILY; IS THAT RIGHT?

02:31PM 21 A. YES, AND TO THE INVESTMENT COMMITTEE, AND THE BOARD.

02:32PM 22 Q. AND WAS THE BOARD MADE UP OF FAMILY MEMBERS AS WELL?

02:32PM 23 A. YES.

02:32PM 24 Q. OKAY. I HAVE A COUPLE OF BINDERS THAT I'M GOING TO PASS

02:32PM 25 UP TO YOU IF THAT'S OKAY.

02:32PM 1 LET ME GET THEM.

02:33PM 2 MAY I APPROACH THE WITNESS, YOUR HONOR?

02:33PM 3 THE COURT: YES.

02:33PM 4 MR. COOPERSMITH: (HANDING.)

02:33PM 5 THANK YOU.

02:33PM 6 Q. OKAY. DO YOU REMEMBER A MINUTE AGO I ASKED YOU WHETHER

02:33PM 7 JERRY TUBERGEN WAS AN EXPERT ON INVESTMENTS IN YOUR VIEW?

02:33PM 8 A. YES.

02:33PM 9 Q. AND YOU SAID THAT YOU THOUGHT HE WAS A VERY GOOD INVESTOR,

02:33PM 10 BUT YOU DIDN'T QUITE SAY HE WAS AN EXPERT IN INVESTMENTS; IS

02:33PM 11 THAT RIGHT?

02:33PM 12 A. I DON'T -- DEFINE "EXPERT" I GUESS.

02:33PM 13 Q. OKAY.

02:33PM 14 A. NEVER LOSES MONEY? I MEAN, IS THAT AN EXPERT?

02:34PM 15 Q. SO I'D LIKE YOU TO JUST TAKE A LOOK AT, I THINK IT'S IN

02:34PM 16 THE SECOND OF YOUR BINDERS, AND IT'S VOLUME 2, AND THERE'S AN

02:34PM 17 EXHIBIT THAT IS LABELLED 28412.

02:34PM 18 A. YES.

02:34PM 19 Q. AND IF YOU COULD TURN TO PAGE 4724 OF THAT EXHIBIT?

02:34PM 20 A. WHAT PAGE? I'M SORRY.

02:34PM 21 Q. PAGE 4724.

02:34PM 22 A. 28412?

02:34PM 23 Q. YES. THANK YOU?

02:34PM 24 A. PAGE 4 -- I'M SORRY, I'M NOT -- I'M SEEING PAGES 100.

02:34PM 25 Q. IN THE EXHIBIT 4 -- I'M SORRY. IN EXHIBIT 28412, THERE

02:34PM 1 SHOULD BE A PAGE 4724.

02:35PM 2 THE COURT: IN THE UPPER RIGHT-HAND CORNER.

02:35PM 3 MR. COOPERSMITH: YES. SORRY ABOUT THAT.

02:35PM 4 YES, IN THE UPPER RIGHT-HAND CORNER.

02:35PM 5 THANK YOU, YOUR HONOR.

02:35PM 6 OH, 4724. OKAY.

02:35PM 7 BY MR. COOPERSMITH:

02:35PM 8 Q. AND DO YOU SEE ON THAT PAGE THERE ARE LINE NUMBERS?

02:35PM 9 A. YES.

02:35PM 10 Q. AND THEN IF YOU COULD LOOK AT LINES 20 THROUGH 22.

02:35PM 11 DO YOU SEE THAT?

02:35PM 12 A. YES.

02:35PM 13 Q. OKAY. AND THIS IS PRIOR TESTIMONY THAT YOU GAVE?

02:35PM 14 A. OKAY. YES.

02:35PM 15 Q. ALL RIGHT. AND IN THAT PRIOR TESTIMONY YOU WERE ASKED A

02:35PM 16 QUESTION, DID YOU CONSIDER HIM TO BE AN EXPERT ON

02:35PM 17 INVESTMENTS --

02:35PM 18 MR. LEACH: YOUR HONOR, OBJECTION. HEARSAY.

02:35PM 19 THE COURT: WHY DON'T YOU LAY A FOUNDATION AND ASK

02:35PM 20 THAT QUESTION AGAIN IN ANOTHER WAY.

02:35PM 21 THIS IS 613?

02:35PM 22 MR. LEACH: YES, YOUR HONOR.

02:35PM 23 THE COURT: ALL RIGHT. SO WHY DON'T YOU LET HER

02:35PM 24 READ IT AND THEN ASK A QUESTION ABOUT HER TESTIMONY.

02:35PM 25 MR. COOPERSMITH: OKAY.

02:35PM 1 Q. MS. PETERSON, LET ME JUST ASK YOU A FEW OTHER THINGS.

02:36PM 2 SO YOU'VE TESTIFIED BEFORE IN CONNECTION WITH THERANOS;

02:36PM 3 RIGHT.

02:36PM 4 A. YES.

02:36PM 5 Q. AND ON MORE THAN ONE OCCASION?

02:36PM 6 A. AT TRIAL OR DEPOSITION? I'M --

02:36PM 7 Q. WHATEVER THE PROCEEDING, YOU'VE TESTIFIED UNDER OATH ON

02:36PM 8 MORE THAN ONE OCCASION?

02:36PM 9 A. YES.

02:36PM 10 Q. OKAY. AND WHEN YOU TESTIFIED BEFORE, EACH TIME YOU DID

02:36PM 11 THAT, YOU RAISED YOUR RIGHT HAND, YOU TOOK AN OATH TO TELL THE

02:36PM 12 TRUTH?

02:36PM 13 A. YES.

02:36PM 14 Q. AND YOU UNDERSTOOD THAT THAT'S WHAT YOU HAD TO DO; RIGHT?

02:36PM 15 A. YES.

02:36PM 16 Q. AND IN CONNECTION WITH THAT, YOU WERE ASKED QUESTIONS AND

02:36PM 17 YOU GAVE ANSWERS; RIGHT?

02:36PM 18 A. YES.

02:36PM 19 Q. AND YOU UNDERSTAND TRANSCRIPTS WERE CREATED?

02:36PM 20 A. YES.

02:36PM 21 Q. AND GOING BACK TO THE QUESTION OF THIS PARTICULAR POINT,

02:36PM 22 WHETHER MR. TUBERGEN WAS AN EXPERT, YOU SEE IN YOUR TESTIMONY

02:36PM 23 EARLIER YOU HAD AGREED THAT MR. TUBERGEN WAS AN EXPERT IN

02:36PM 24 INVESTMENTS; CORRECT?

02:36PM 25 A. YES, EXPERT, EXCELLENT INVESTOR.

02:37PM 1 IT'S HARD TO DEFINE "EXPERT."

02:37PM 2 Q. OKAY. I'M JUST --

02:37PM 3 A. I UNDERSTAND, YES.

02:37PM 4 Q. IN YOUR PREVIOUS TESTIMONY, YOU AGREED THAT HE WAS AN

02:37PM 5 EXPERT ON INVESTMENTS; RIGHT?

02:37PM 6 A. YES.

02:37PM 7 Q. AND YOU AREN'T QUITE GETTING THERE WITH ME TODAY; RIGHT?

02:37PM 8 A. YES.

02:37PM 9 Q. OKAY. LET'S GO TO AN EXHIBIT THAT THE GOVERNMENT SHOWED

02:37PM 10 YOU ON DIRECT, MS. PETERSON, AND THAT'S EXHIBIT 1944.

02:37PM 11 AND, YOU KNOW, YOU CAN FIND IT IN THE BINDER, OR I THINK

02:37PM 12 WE CAN SHOW IT ON THE SCREEN, TOO, WHATEVER YOUR PREFERENCE IS.

02:37PM 13 SOME PEOPLE LIKE PAPER AND SOME PEOPLE LIKE SCREENS.

02:37PM 14 A. OKAY.

02:37PM 15 Q. DO YOU SEE THIS IS AN EMAIL ON THE FIRST PAGE FROM

02:37PM 16 MR. TUBERGEN?

02:37PM 17 A. YES.

02:37PM 18 Q. AND HE IS ATTACHING THE ARTICLE FROM "FORTUNE" MAGAZINE?

02:38PM 19 A. YES.

02:38PM 20 Q. AND HE SAYS, "THIS MORNING I HAD ONE OF THE MOST

02:38PM 21 INTERESTING MEETINGS I CAN RECALL WITH THE WOMAN PROFILED IN

02:38PM 22 THE ATTACHED "FORTUNE" MAGAZINE ARTICLE.

02:38PM 23 DO YOU SEE THAT?

02:38PM 24 A. YES.

02:38PM 25 Q. AND I THINK YOU SAID HE WAS REFERRING TO MS. HOLMES?

02:38PM 1 A. YES.

02:38PM 2 Q. AND YOU UNDERSTAND THAT MR. TUBERGEN MET MS. HOLMES AT A

02:38PM 3 CONFERENCE?

02:38PM 4 A. YES.

02:38PM 5 Q. AND THAT WAS A CONFERENCE SPONSORED BY A GROUP CALLED BDT?

02:38PM 6 A. YES.

02:38PM 7 Q. AND BDT STANDS FOR BYRON D. TROTT?

02:38PM 8 A. YES.

02:38PM 9 Q. AND MR. TROTT IS AN INVESTMENT BANKER?

02:38PM 10 A. HE'S AN INVESTOR BANKER AND PRIVATE EQUITY FIRM NOW. HE'S

02:38PM 11 RAISED MONEY THAT HE INVESTS.

02:38PM 12 Q. AND RDV HAS WORKED WITH MR. TROTT IN THE PAST?

02:38PM 13 A. YES.

02:38PM 14 Q. AND MR. TROTT IS SOMEONE THAT YOU WOULD DESCRIBE AS A WISE

02:38PM 15 INVESTOR?

02:38PM 16 A. YES.

02:38PM 17 Q. AND MR. TROTT HAS A SPECIALTY OF HELPING WEALTHY FAMILIES

02:38PM 18 INVEST FUNDS; IS THAT RIGHT?

02:38PM 19 A. YES.

02:38PM 20 Q. AND HE SPONSORS A CONFERENCE IN CHICAGO EVERY YEAR?

02:39PM 21 A. AS PART OF HIS -- THE FUND THAT HE INVESTS MONEY FOR, YES,

02:39PM 22 THEY HOLD AN ANNUAL MEETING OF THEIR INVESTORS.

02:39PM 23 Q. I'M SORRY TO INTERRUPT YOU.

02:39PM 24 HAVE YOU EVER BEEN TO THAT CONFERENCE?

02:39PM 25 A. ONLY -- YES, I WAS THERE AFTER THIS INVESTMENT IN 2016,

02:39PM 1 2017.

02:39PM 2 Q. OKAY. BUT AT THE 2014 TIME PERIOD, YOU DIDN'T ATTEND

02:39PM 3 MR. TROTT'S CONFERENCE THAT YEAR?

02:39PM 4 A. NO. I WASN'T THE LEAD PERSON ON THIS INVESTMENT IN THIS

02:39PM 5 GROUP AT THE TIME.

02:39PM 6 Q. BUT JERRY TUBERGEN DID ATTEND THE CONFERENCE?

02:39PM 7 A. YES.

02:39PM 8 Q. AND HE -- YOU UNDERSTAND HE CAME BACK FROM THAT CONFERENCE

02:39PM 9 WITH SOME INFORMATION ABOUT MS. HOLMES?

02:39PM 10 A. YES.

02:39PM 11 Q. BECAUSE HE ACTUALLY MET HER AT THE CONFERENCE; RIGHT?

02:39PM 12 A. YES.

02:39PM 13 Q. AND ONE OF THE THINGS THAT HE DID WAS PULL UP AN ARTICLE

02:39PM 14 FROM "FORTUNE"?

02:39PM 15 A. YES. I ACTUALLY RODE HOME ON A PRIVATE AIRPLANE WITH HIM

02:40PM 16 AFTER HE HAD HIS MEETING, AND HE GAVE ME THAT ARTICLE.

02:40PM 17 Q. YOU WEREN'T AT THE BDT CONFERENCE, BUT YOU WERE ON THE

02:40PM 18 PRIVATE JET WITH MR. TUBERGEN?

02:40PM 19 A. YES, ON THE WAY HOME. I HAD OTHER MEETINGS IN CHICAGO.

02:40PM 20 Q. I SEE. SO YOU WERE FLYING BACK TO GRAND RAPIDS WITH

02:40PM 21 MR. TUBERGEN?

02:40PM 22 A. CORRECT.

02:40PM 23 Q. AND HE PULLED UP AN ARTICLE AND SHOWED IT TO YOU?

02:40PM 24 A. YES. HE SAID BASICALLY EXACTLY WHAT HE SAID HERE, IT WAS

02:40PM 25 ONE OF THE MOST INTERESTING MEETINGS THAT HE HAD EVER HAD. AND

02:40PM 1 RANDY WAS WITH ME, MY BOSS, SO IT WAS THE TWO OF US, AND HIM,

02:40PM 2 TELLING US ABOUT THE MEETING HE HAD HAD AND HE HANDED ME THAT

02:40PM 3 ARTICLE.

02:40PM 4 Q. NOW, MR. TUBERGEN AT THE CONFERENCE, HE DIDN'T MEET WITH

02:40PM 5 MR. BALWANI; CORRECT?

02:40PM 6 A. I DON'T KNOW.

02:40PM 7 Q. YOU DON'T KNOW ONE WAY OR THE OTHER?

02:40PM 8 A. I DON'T KNOW.

02:40PM 9 Q. OKAY. BUT ON THE PLANE RIDE BACK, HE TOLD YOU ABOUT

02:40PM 10 MS. HOLMES?

02:40PM 11 A. YES.

02:40PM 12 Q. AND HE SHOWED YOU AN ARTICLE?

02:40PM 13 A. YES, AND THAT HER BROTHER, CHRISTIAN, WAS THERE. I DO

02:41PM 14 RECALL THAT.

02:41PM 15 Q. CHRISTIAN HOLMES WAS AT THE CONFERENCE AS WELL?

02:41PM 16 A. WAS AT THIS MEETING.

02:41PM 17 Q. OKAY. AND THEN WHEN MR. TUBERGEN SHOWED YOU THE

02:41PM 18 "FORTUNE" ARTICLE ON THE AIRPLANE, DID YOU READ IT RIGHT THEN?

02:41PM 19 A. NO.

02:41PM 20 Q. YOU READ IT LATER?

02:41PM 21 A. YES.

02:41PM 22 Q. OKAY. BUT YOU UNDERSTAND THAT MR. TUBERGEN HAD PULLED

02:41PM 23 THAT ARTICLE UP OR IT HAD BEEN HANDED TO HIM OR SOMETHING OF

02:41PM 24 THAT NATURE?

02:41PM 25 A. HE HAD BEEN GIVEN THAT TO HIM AT THE MEETING.

02:41PM 1 Q. OKAY. SOMEONE GAVE IT TO HIM AT THE MEETING?

02:41PM 2 A. YES.

02:41PM 3 Q. OKAY. BUT YOU DON'T KNOW EXACTLY WHO?

02:41PM 4 A. NO.

02:41PM 5 Q. OKAY. NOW, AT SOME POINT, THOUGH, YOU DID READ THE

02:41PM 6 ARTICLE; CORRECT?

02:41PM 7 A. YES.

02:41PM 8 Q. AND THAT WAS ONE OF THE THINGS THAT YOU USED TO INFORM THE

02:41PM 9 MEMOS THAT YOU WROTE?

02:41PM 10 A. ONE OF THE THINGS, YES.

02:41PM 11 Q. OKAY. AND LET'S LOOK AT THE ARTICLE A LITTLE BIT MORE

02:41PM 12 THAT YOU SAW ON DIRECT.

02:41PM 13 SO IF YOU GO TO THE FIRST PAGE, THAT'S THE EMAIL, BUT IF

02:41PM 14 YOU GO TO PAGE 3 OF THE EXHIBIT, I THINK IT'S LABELLED

02:42PM 15 PAGE 3 -- NOW I'M REFERRING TO THE BOTTOM MIDDLE NUMBERS,

02:42PM 16 MS. PETERSON.

02:42PM 17 YOU CAN SEE IT ON THE SCREEN IF THAT'S OKAY WITH YOU.

02:42PM 18 A. CORRECT.

02:42PM 19 Q. OKAY. SO YOU SEE THE BOTTOM MIDDLE, THERE'S A PAGE 3?

02:42PM 20 A. YES.

02:42PM 21 Q. RIGHT. AND THEN IT'S "NEW BLOOD" IT SAYS WITH KIND OF A

02:42PM 22 BLOOD DROP ON THE PAGE?

02:42PM 23 A. YES.

02:42PM 24 Q. OKAY. AND THEN THE NEXT PAGE IS A PICTURE OF MS. HOLMES;

02:42PM 25 RIGHT?

02:42PM 1 A. YES.

02:42PM 2 Q. NOW, IF WE GO TO PAGE 5 OF THE ARTICLE, DO YOU SEE IN THE

02:42PM 3 VERY FIRST PARAGRAPH IN THE UPPER LEFT IT TALKS ABOUT

02:42PM 4 MS. HOLMES SPENDING A SUMMER WORKING IN A LAB.

02:42PM 5 DO YOU SEE THAT?

02:42PM 6 A. YES.

02:42PM 7 Q. AND THEN IT REFERS TO A PERSON NAMED ROBERTSON.

02:42PM 8 DO YOU SEE THAT?

02:42PM 9 A. YES.

02:42PM 10 Q. AND DO YOU UNDERSTAND THAT'S CHANNING ROBERTSON?

02:43PM 11 A. YES, SOMEONE THAT SHE -- SOME PROFESSOR THAT SHE HAD AT

02:43PM 12 STANFORD, IF I RECALL CORRECTLY.

02:43PM 13 Q. RIGHT. AND MR. -- THE PARAGRAPH TALKS ABOUT

02:43PM 14 PROFESSOR ROBERTSON; CORRECT?

02:43PM 15 A. YES.

02:43PM 16 Q. AND IT SAYS IN THE SECOND PARAGRAPH, "I REMEMBER HER

02:43PM 17 SAYING, AND WE COULD PUT A CELL PHONE CHIP ON IT, AND IT COULD

02:43PM 18 TELEMETER OUT TO THE DOCTOR OR THE PATIENT WHAT WAS GOING ON,

02:43PM 19 ROBERTSON RECOUNTS. AND I KIND OF KICKED MYSELF. I'D

02:43PM 20 CONSULTED IN THIS AREA FOR 30 YEARS BUT I'D NEVER SAID HERE WE

02:43PM 21 MAKE ALL OF THESE GIZMOS THAT MEASURE, AND ALL OF THESE SYSTEMS

02:43PM 22 THAT DELIVER, BUT I NEVER BROUGHT THE TWO TOGETHER."

02:43PM 23 DO YOU SEE THAT?

02:43PM 24 A. YES.

02:43PM 25 Q. YOU UNDERSTAND THAT HE'S TALKING ABOUT SOMETHING THAT

02:43PM 1 MS. HOLMES CAME TO HIM WITH, SOME INVENTION?

02:43PM 2 MR. LEACH: YOUR HONOR --

02:43PM 3 THE COURT: EXCUSE ME, MR. COOPERSMITH.

02:43PM 4 MR. LEACH: OBJECTION. I THINK THIS GOES BEYOND THE

02:43PM 5 PURPOSE OF WHICH THIS EXHIBIT WAS ADMITTED.

02:43PM 6 THE COURT: YOU'RE CALLING HER ATTENTION TO THIS AND

02:43PM 7 WHETHER SHE READ IT AND WHETHER THIS INFORMED HER DECISION?

02:44PM 8 MR. COOPERSMITH: YES, YOUR HONOR.

02:44PM 9 THE COURT: OKAY. WELL, YOU CAN ASK ABOUT THOSE

02:44PM 10 THINGS.

02:44PM 11 BUT ANYTHING ABOUT THE INVENTION BEHIND THE SCENES MIGHT

02:44PM 12 NOT BE RELEVANT TO THAT IF IT'S OUTSIDE OF HER PERSONAL

02:44PM 13 KNOWLEDGE.

02:44PM 14 MR. COOPERSMITH: OKAY. I'LL TRY TO STAY WITHIN --

02:44PM 15 OR COLOR WITHIN THE LINES, AS THEY SAY.

02:44PM 16 THE COURT: SURE.

02:44PM 17 BY MR. COOPERSMITH:

02:44PM 18 Q. OKAY. IF YOU GO ON TO THE PARAGRAPH THAT STARTS, "THAT

02:44PM 19 CLINCHED IT FOR HIM."

02:44PM 20 DO YOU SEE THAT?

02:44PM 21 A. UH-HUH.

02:44PM 22 Q. AND IT SAYS, "THAT CLINCHED IT FOR HIM, WHEN I FINALLY

02:44PM 23 CONNECTED WITH WHAT ELIZABETH FUNDAMENTALLY IS, HE SAYS, I

02:44PM 24 REALIZED THAT I COULD HAVE JUST AS WELL BEEN LOOKING INTO THE

02:44PM 25 EYES OF A STEVE JOBS OR A BILL GATES."

02:44PM 1 DO YOU SEE THAT?

02:44PM 2 A. YES.

02:44PM 3 Q. AND THAT'S A QUOTE WHAT PROFESSOR CHANNING ROBERTSON, THIS

02:44PM 4 PROFESSOR, IS SAYING ABOUT MS. HOLMES?

02:44PM 5 A. YES.

02:44PM 6 Q. AND YOU YOURSELF, EVEN BEFORE YOU WERE INVOLVED WITH THIS

02:44PM 7 INVESTMENT, THOUGHT MS. HOLMES WAS VERY IMPRESSIVE; RIGHT?

02:44PM 8 A. YES.

02:44PM 9 Q. AND THAT'S ONE OF THE REASONS YOU WANTED TO BE INVOLVED

02:45PM 10 WITH THE INVESTMENT; RIGHT?

02:45PM 11 A. YES, THAT I WANTED TO WORK ON IT, YES.

02:45PM 12 Q. IN FACT, YOU VOLUNTEERED TO DO THAT BECAUSE YOU THOUGHT IT

02:45PM 13 WAS INTERESTING?

02:45PM 14 A. YES.

02:45PM 15 Q. AND THEN IT GOES ON IN THE VERY NEXT LINE TO SAY, "WITH

02:45PM 16 ROBERTSON'S BLESSING, HOLMES STARTED HER COMPANY."

02:45PM 17 DO YOU SEE THAT?

02:45PM 18 A. YES.

02:45PM 19 Q. OKAY. IF YOU GO TO PAGE 6 OF THE ARTICLE.

02:45PM 20 AND IF YOU GO TO THE PARAGRAPH THAT STARTS "PRECISELY HOW

02:45PM 21 THERANOS."

02:45PM 22 DO YOU SEE THAT?

02:45PM 23 A. YES.

02:45PM 24 Q. AND I WANT TO GO TO THE NEXT PARAGRAPH, AND IT READS, "THE

02:45PM 25 SCALE OF THERANOS'S OPERATIONS AT THE MOMENT IS MODEST."

02:45PM 1 DO YOU SEE THAT?

02:45PM 2 A. YES.

02:45PM 3 Q. AND YOU UNDERSTOOD THAT WAS THE CASE AT THE TIME IN

02:45PM 4 OCTOBER OF 2014; RIGHT?

02:45PM 5 A. NO.

02:45PM 6 Q. WELL, SO YOU DIDN'T BELIEVE THIS PART OF THE ARTICLE?

02:45PM 7 A. THE PARTS OF THE ARTICLE THAT WERE RELEVANT TO US AND THE

02:45PM 8 PARTS THAT I RECALL AND REMEMBER ARE THE PARTS THAT ARE IN MY

02:46PM 9 MEMOS.

02:46PM 10 Q. OKAY. BUT NONETHELESS, THIS INFORMATION IS IN THE

02:46PM 11 ARTICLE; RIGHT?

02:46PM 12 A. CORRECT.

02:46PM 13 Q. AND THAT WAS AVAILABLE FOR YOU TO CONSIDER; CORRECT?

02:46PM 14 A. CORRECT.

02:46PM 15 Q. THEN IT GOES ON, "ITS PHLEBOTOMISTS CURRENTLY TAKE

02:46PM 16 PHYSICIAN-ORDERED BLOOD DRAWS (AND SALIVA, URINE, FECES, AND

02:46PM 17 OTHER SAMPLES) AT COLLECTION CENTERS THE COMPANY OPERATES AT

02:46PM 18 ITS HEADQUARTERS IN PALO ALTO AND AT 21 WALGREENS -- ONE IN

02:46PM 19 PALO ALTO AND THE REST IN PHOENIX."

02:46PM 20 DO YOU SEE THAT?

02:46PM 21 A. YES.

02:46PM 22 Q. AND SO THIS ARTICLE IS TELLING ANYONE WHO READ IT THAT

02:46PM 23 THERE ARE COLLECTION CENTERS WHERE THE BLOOD IS COLLECTED AT

02:46PM 24 WALGREENS?

02:46PM 25 A. THAT WAS NEVER, EVER MENTIONED IN OUR CONVERSATIONS WITH

02:46PM 1 ELIZABETH OR SUNNY BALWANI AT THE PALO ALTO MEETING.

02:46PM 2 WE WERE UNDER THE COMPLETE UNDERSTANDING THAT THEIR

02:46PM 3 ANALYZER MACHINE IS THE ONLY THING THAT THEY USED, AND

02:46PM 4 FINGERSTICK WAS THE ONLY WAY THAT THEY WERE DOING BLOOD TESTS.

02:46PM 5 Q. OKAY. BUT MR. PARLOFF, IN HIS ARTICLE, WRITES THESE WORDS

02:47PM 6 THAT I JUST READ; CORRECT?

02:47PM 7 A. YES, AND THEY WERE ALSO IN 40 WALGREENS STORES AND THIS

02:47PM 8 SAYS 21, SO --

02:47PM 9 Q. OKAY. WE'LL TALK ABOUT THAT IN A FEW MINUTES, OR PERHAPS

02:47PM 10 TOMORROW.

02:47PM 11 BUT RIGHT NOW MY ONLY QUESTION IS, THIS WAS AN ARTICLE

02:47PM 12 THAT YOU TESTIFIED THAT YOU CONSIDERED IN CONNECTION WITH

02:47PM 13 HELPING RDV DECIDE ON THIS INVESTMENT; CORRECT?

02:47PM 14 A. YES, PARTS OF IT.

02:47PM 15 Q. AND THESE WORDS OF MR. PARLOFF WERE RIGHT THERE IN THE

02:47PM 16 ARTICLE FOR YOU TO CONSIDER IF YOU HAD WANTED TO; CORRECT?

02:47PM 17 A. YES.

02:47PM 18 Q. ABOUT THE COLLECTION CENTERS?

02:47PM 19 A. YES.

02:47PM 20 Q. NOW, LET'S GO ON TO THE NEXT COLUMN.

02:47PM 21 DO YOU SEE IN THE SECOND PARAGRAPH UP FROM THE BOTTOM THAT

02:47PM 22 IS UP ON THE SCREEN RIGHT NOW, IT SAYS, "I JUST THINK THIS IS

02:48PM 23 SO EXCITING, SAYS MARK LARET, THE CEO OF UCSF MEDICAL CENTER,

02:48PM 24 ABOUT WHAT HE'S SEEN SO FAR."

02:48PM 25 DO YOU SEE THAT?

02:48PM 1 A. YES.

02:48PM 2 Q. "I MEAN, HERE IT IS. THIS IS THE TRUE TRANSFORMATION OF

02:48PM 3 HEALTH CARE, RIGHT HERE IN FRONT OF US."

02:48PM 4 DO YOU SEE THAT?

02:48PM 5 A. YES.

02:48PM 6 Q. AND DO YOU UNDERSTAND THAT UCSF IS THE UNIVERSITY OF

02:48PM 7 CALIFORNIA SAN FRANCISCO MEDICAL CENTER?

02:48PM 8 A. YES.

02:48PM 9 Q. AND THEN IT GOES ON, "THE FIRST TIME I HEARD ABOUT THIS I

02:48PM 10 THOUGHT IT WAS SNAKE OIL AND MIRRORS, SAYS DAVID HELFET, THE

02:48PM 11 CHIEF OF ORTHOPEDIC TRAUMA AT THE HOSPITAL FOR SPECIAL SURGERY

02:48PM 12 IN MANHATTAN."

02:48PM 13 DO YOU SEE THAT?

02:48PM 14 A. YES.

02:48PM 15 Q. AND DID YOU EVER TALK TO DR. HELFET?

02:48PM 16 A. NO.

02:48PM 17 Q. AND THEN IT SAYS, "BUT AFTER REVIEWING VOLUMINOUS

02:48PM 18 VALIDATION STUDIES SUPPLIED TO HIM BY THE COMPANY, HE HAS

02:48PM 19 BECOME A BELIEVER AND IS URGING HIS HOSPITAL TO CONSIDER

02:48PM 20 ADOPTION."

02:48PM 21 DO YOU SEE THAT?

02:48PM 22 A. YES.

02:48PM 23 Q. AND THEN IT GOES ON TO SAY, "IT'S REAL DATA, HE SAYS.

02:49PM 24 IT'S NOT THEIR INTERPRETATION. (THERANOS HAS INVITED HELFET TO

02:49PM 25 JOIN ITS MEDICAL ADVISORY BOARD, HE SAYS, BUT HE HAS NOT

02:49PM 1 DECIDED WHETHER TO DO SO.)"

02:49PM 2 DO YOU SEE THAT?

02:49PM 3 A. YES.

02:49PM 4 Q. AND THEN IT GOES ON TO SAY, "HELPET SEES AN OPPORTUNITY TO

02:49PM 5 ENLIST THERANOS LAB SERVICES IN THE IDENTIFICATION OF SO-CALLED

02:49PM 6 HOSPITAL-ACQUIRED INFECTIONS -- A MAJOR SCOURGE IN HEALTH CARE

02:49PM 7 TODAY."

02:49PM 8 DO YOU SEE THAT?

02:49PM 9 A. YES.

02:49PM 10 Q. OKAY. AND DID YOU DO ANY FOLLOW-UP WITH THE HOSPITAL FOR

02:49PM 11 SPECIAL SURGERY IN MANHATTAN OR DR. HELPET?

02:49PM 12 A. NO.

02:49PM 13 Q. OKAY. IF WE CAN GO TO PAGE 8 OF THE ARTICLE, AND GO TO

02:50PM 14 THE SECOND COLUMN -- ACTUALLY LET'S GO TO THE FIRST COLUMN,

02:50PM 15 FIRST.

02:50PM 16 IF YOU GO TWO PARAGRAPHS FROM THE BOTTOM OF THE FIRST

02:50PM 17 COLUMN THERE, DO YOU SEE WHERE IT SAYS, "MOREOVER, HOLMES

02:50PM 18 STRESSES, THERANOS IS CURRENTLY SEEKING FDA CLEARANCE FOR EVERY

02:50PM 19 ONE OF ITS TESTS, EVEN THOUGH IT'S UNDER NO LEGAL OBLIGATION TO

02:50PM 20 DO SO."

02:50PM 21 DO YOU SEE THAT?

02:50PM 22 A. YES.

02:50PM 23 Q. AND THEN IT SAYS, "(SHE HAS SUBMITTED MANY HUNDREDS OF

02:50PM 24 PAGES OF VALIDATION DATA IN THIS EFFORT, AND HAS SHOWN MUCH OF

02:50PM 25 THAT DATA TO 'FORTUNE.')"

02:50PM 1 DO YOU SEE THAT?

02:50PM 2 A. YES.

02:50PM 3 Q. AND THEN IT SAYS -- I'LL READ IT AGAIN.

02:50PM 4 DO YOU SEE WHERE IT SAYS, "THERANOS MAY, IN FACT, BE THE

02:50PM 5 ONLY LAB TO HAVE EVER SOUGHT FDA CLEARANCE FOR LDT'S"?

02:50PM 6 DO YOU SEE THAT?

02:50PM 7 A. YES.

02:50PM 8 Q. AND DO YOU UNDERSTAND THAT LDT'S ARE LAB DEVELOPED TESTS?

02:50PM 9 A. YES.

02:50PM 10 Q. AND YOU ARE AWARE THAT THERANOS DID SUBMIT AN APPLICATION

02:51PM 11 FOR FDA APPROVAL FOR ONE OF ITS ASSAYS RUNNING ON THE THERANOS

02:51PM 12 SYSTEM?

02:51PM 13 A. YES.

02:51PM 14 Q. AND YOU UNDERSTAND THE FDA APPROVED THAT PARTICULAR ASSAY?

02:51PM 15 A. THE ONE, YES.

02:51PM 16 Q. RIGHT, RUNNING ON THE THERANOS SYSTEM?

02:51PM 17 A. YES.

02:51PM 18 Q. AND THEN --

02:51PM 19 A. THAT WAS AFTER OUR INVESTMENT, THOUGH.

02:51PM 20 Q. RIGHT. THE APPROVAL WAS AFTER THE INVESTMENT?

02:51PM 21 A. YES.

02:51PM 22 Q. AND THEN IF YOU GO TO THE PARAGRAPH RIGHT BELOW THAT, IT

02:51PM 23 SAYS, "BEYOND THE VALIDATION DISPUTES, SKEPTICS ALSO QUESTION

02:51PM 24 THERANOS'S BUSINESS MODEL."

02:51PM 25 DO YOU SEE THAT?

02:51PM 1 A. YES.

02:51PM 2 Q. AND THEN IT SAYS, "THEY DOUBT ITS ABILITY TO SCALE UP ANY

02:51PM 3 TIME SOON TO THE LEVELS NECESSARY TO BECOME A SERIOUS

02:51PM 4 COMPETITOR, ESPECIALLY SINCE THE BUSINESS HAS SO MANY

02:51PM 5 UNGLAMOROUS ASPECTS UNRELATED TO TESTING -- BILLING, CUSTOMER

02:51PM 6 SERVICE, SORTING, REGULATORY COMPLIANCE, AND THE LOGISTICS OF

02:51PM 7 TRANSPORTING SAMPLES FROM PHYSICIANS TO LABS."

02:52PM 8 DO YOU SEE THAT?

02:52PM 9 A. YES.

02:52PM 10 Q. AND THEN IT GOES ON IN THE NEXT PARAGRAPH, "QUEST" -- AND

02:52PM 11 YOU UNDERSTAND QUEST IS ONE OF THE COMPETITORS?

02:52PM 12 MR. LEACH: YOUR HONOR --

02:52PM 13 THE COURT: EXCUSE ME.

02:52PM 14 MR. LEACH: YOUR HONOR, I OBJECT AND MOVE TO STRIKE

02:52PM 15 THIS. HE'S READING FROM AN ARTICLE THAT IS NOT IN FOR ITS

02:52PM 16 TRUTH.

02:52PM 17 MR. COOPERSMITH: YOUR HONOR, THEY PUT THIS ARTICLE

02:52PM 18 INTO EVIDENCE.

02:52PM 19 THE COURT: OH, I REMEMBER WHO PUT IT IN, OF COURSE.

02:52PM 20 ARE WE GOING TO GO THROUGH THE WHOLE ARTICLE?

02:52PM 21 MR. COOPERSMITH: NO, NO, YOUR HONOR. I DON'T THINK

02:52PM 22 WE HAVE TIME FOR THAT.

02:52PM 23 THE COURT: OKAY. I AGREE.

02:52PM 24 WELL, LET'S CONTINUE.

02:52PM 25 YOU HAVE A QUESTION ABOUT QUEST?

02:52PM 1 MR. COOPERSMITH: YES, YOUR HONOR.

02:52PM 2 THE COURT: ALL RIGHT. I'LL ALLOW YOU TO ASK THAT

02:52PM 3 QUESTION.

02:52PM 4 MR. COOPERSMITH: THANK YOU.

02:52PM 5 Q. MS. PETERSON, I THINK YOU SAID BEFORE THAT QUEST WAS ONE

02:52PM 6 OF THE MAJOR LABORATORY COMPANIES IN THE UNITED STATES THAT WAS

02:52PM 7 IDENTIFIED AS A MAJOR COMPETITOR TO THERANOS?

02:52PM 8 A. YES.

02:52PM 9 Q. A MUCH LARGER COMPANY AT THE TIME; CORRECT?

02:52PM 10 A. YES.

02:52PM 11 Q. AND ACCORDING TO THE ARTICLE, THEY EMPLOYED 45,000 PEOPLE,

02:52PM 12 AND OWNED A FLEET OF 3,000 VEHICLES AND 20 AIRPLANES AND SO ON

02:52PM 13 AND SO ON?

02:52PM 14 DO YOU SEE THAT?

02:52PM 15 A. YES.

02:52PM 16 Q. AND THERANOS DIDN'T HAVE THAT AT THE TIME.

02:53PM 17 YOU UNDERSTOOD THAT?

02:53PM 18 A. CORRECT.

02:53PM 19 Q. RIGHT. AND THEN IT TALKED ABOUT HOW SKEPTICS WERE

02:53PM 20 DOUBTING THERANOS'S ABILITY TO SCALE; RIGHT?

02:53PM 21 A. YES.

02:53PM 22 Q. IS THAT RIGHT, MS. PETERSON?

02:53PM 23 A. YES.

02:53PM 24 Q. AND, IN FACT, YOU INCORPORATED THAT INFORMATION INTO YOUR

02:53PM 25 MEMOS THAT YOU LOOKED AT BEFORE WITH MR. LEACH?

02:53PM 1 A. YES. THIS IS ONE THING THAT I DID POINT OUT.

02:53PM 2 Q. RIGHT. ONE OF THE RISKS THAT YOU SAW IN THE INVESTMENT;

02:53PM 3 RIGHT?

02:53PM 4 A. YES.

02:53PM 5 Q. THAT THERANOS WOULD NOT --

02:53PM 6 A. AGAIN, IT GOES BACK TO EXECUTION, THE EXECUTION RISK AND

02:53PM 7 RESOURCES AND THE ABILITY TO SCALE THE BUSINESS, NOT THAT IT

02:53PM 8 DIDN'T WORK.

02:53PM 9 Q. RIGHT. THANK YOU.

02:53PM 10 SO THE RISK THAT IS BEING DISCUSSED IN THE ARTICLE ABOUT

02:53PM 11 WHAT THE SKEPTICS THINK, THAT'S THE SAME POINT THAT YOU WERE

02:53PM 12 MAKING WHEN YOU WERE TALKING ABOUT EXECUTION RISK?

02:53PM 13 A. SHE ALSO SAID THAT IN BOTH MEETINGS, SPECIFICALLY IN THE

02:53PM 14 PHONE CALL THAT WE HAD, THAT NOW THAT THEY HAD THE CONTRACTS,

02:53PM 15 THE RISK TO THEM WAS EXECUTION, THAT IT WAS ALL ABOUT THE

02:54PM 16 PEOPLE.

02:54PM 17 Q. RIGHT. AND THE EXECUTION RISK WOULD BE THAT THEY WOULDN'T

02:54PM 18 BE ABLE TO SCALE UP THEIR BUSINESS; RIGHT?

02:54PM 19 A. NOT THAT THEY WOULDN'T BE ABLE TO, BUT THAT THAT IS THE

02:54PM 20 RISK, THAT THE EXECUTION PART OF THE BUSINESS IS WHERE THEY

02:54PM 21 NEEDED TO SPEND THE MOST TIME AND FOCUS.

02:54PM 22 Q. RIGHT.

02:54PM 23 BUT THE EXECUTION RISK, AS YOU PUT IT, WOULD BE THAT THE

02:54PM 24 COMPANY WOULDN'T BE ABLE TO ACTUALLY OPEN ALL OF THE WALGREENS

02:54PM 25 STORES WITH WALGREENS THAT THEY WERE HOPING TO OPEN; RIGHT?

02:54PM 1 A. THEY -- THAT WAS THE GOAL. THAT WAS THE WHOLE BUSINESS
02:54PM 2 PLAN WAS TO ROLL OUT TO WALGREENS, AND SO, YES, WE THOUGHT THAT
02:54PM 3 THEY COULD ROLL OUT.
02:54PM 4 WOULD THEY ROLL OUT TO 900 STORES IN THE FOLLOWING YEAR?
02:54PM 5 AGAIN, EVEN IF THEY HAD HIT HALF OF THOSE ROLLOUTS, WE
02:54PM 6 THOUGHT THEY WOULD GO BEYOND THE 42 OR 40 THAT THEY HAD AT THE
02:54PM 7 TIME.
02:54PM 8 Q. OKAY. THANK YOU, MS. PETERSON.
02:55PM 9 BUT I WANT TO HAVE A DIFFERENT QUESTION ANSWERED, RIGHT?
02:55PM 10 MY QUESTION IS VERY SIMPLE. THE EXECUTION RISK THAT YOU
02:55PM 11 REFERRED TO IN THE MEMOS THAT YOU WROTE, OKAY --
02:55PM 12 A. YES.
02:55PM 13 Q. -- YOU'RE TALKING ABOUT THE RISK THAT THE COMPANY, DESPITE
02:55PM 14 THEIR GOALS, WOULD NOT ACTUALLY BE ABLE TO OPEN ALL OF THE
02:55PM 15 WALGREENS STORES THAT THEY WANTED TO; RIGHT?
02:55PM 16 A. THAT WAS A RISK, YES.
02:55PM 17 Q. RIGHT.
02:55PM 18 A. BUT THAT'S NOT -- THAT WASN'T THEIR VISION. THAT
02:55PM 19 WASN'T -- WE DIDN'T INTEND -- INVEST THINKING THAT THEY
02:55PM 20 WOULDN'T HIT THOSE NUMBERS.
02:55PM 21 Q. YOU INVESTED HOPING THAT THEY WOULD HIT THOSE NUMBERS;
02:55PM 22 RIGHT?
02:55PM 23 A. YES.
02:55PM 24 Q. RIGHT?
02:55PM 25 A. GIVEN EVERYTHING THAT THEY HAD SAID, WE HAD -- WE DIDN'T

02:55PM 1 HAVE ANY REASON TO BELIEVE THAT THEY WOULDN'T ROLL OUT AS
02:55PM 2 PLANNED.

02:55PM 3 Q. BUT YOU UNDERSTOOD THAT THERE WAS A RISK?

02:55PM 4 A. YES. THERE'S A RISK IN EVERY INVESTMENT.

02:55PM 5 Q. RIGHT. AND THERE'S NOTHING -- WHEN SOMEONE IS PROJECTING
02:55PM 6 A FUTURE OF A BUSINESS, FOR EXAMPLE, OPENING UP HUNDREDS OF
02:56PM 7 STORES AT WALGREENS, THERE'S NO GUARANTEES THAT THAT WILL
02:56PM 8 ACTUALLY HAPPEN; RIGHT?

02:56PM 9 A. CORRECT. BUT THERE WERE FUNDAMENTAL THINGS THAT WE WERE
02:56PM 10 RELYING ON THAT WEREN'T TRUE THAT WERE -- THAT THE ANALYZER
02:56PM 11 ACTUALLY WORKED, AND IT DIDN'T.

02:56PM 12 AND AS WELL AS THAT THEY WERE DOING WORK FOR
02:56PM 13 PHARMACEUTICAL COMPANIES, WHICH THEY WEREN'T.

02:56PM 14 SO THERE WERE A LOT OF THINGS THAT WE RELIED ON.

02:56PM 15 Q. MS. PETERSON, YOU'VE NEVER TESTED THE THERANOS ANALYZER?

02:56PM 16 A. NO.

02:56PM 17 Q. OKAY. SO YOU DON'T HAVE ANY FIRST-HAND KNOWLEDGE AS TO
02:56PM 18 WHETHER IT WORKS OR NOT; CORRECT?

02:56PM 19 A. CORRECT.

02:56PM 20 Q. OKAY. SO, MS. PETERSON, I JUST WANT TO GO BACK TO
02:56PM 21 EXECUTION RISK.

02:56PM 22 YOU UNDERSTOOD THAT THERE'S NO GUARANTEES THAT THE COMPANY
02:56PM 23 WOULD ACTUALLY BE ABLE TO EXECUTE THEIR BUSINESS PLAN TO OPEN
02:56PM 24 HUNDREDS OF WALGREENS STORES?

02:56PM 25 A. CORRECT.

02:56PM 1 Q. AND THERE'S NO GUARANTEES, JUST LIKE THERE'S NO GUARANTEES
02:56PM 2 FOR ANY BUSINESS; RIGHT?
02:56PM 3 A. CORRECT.
02:56PM 4 Q. AND FOR ALL OF THE OTHER INVESTMENTS THAT RDV, YOUR
02:56PM 5 EMPLOYER, MAKES, SOMETIMES SOME ARE SUCCESSFUL AND SOMETIMES
02:56PM 6 SOME ARE LESS THAN SUCCESSFUL; RIGHT?
02:56PM 7 A. CORRECT.
02:56PM 8 Q. RIGHT. AND SOMETIMES, YOU KNOW, DESPITE EVERYONE'S BEST
02:57PM 9 EFFORTS, THOSE COMPANIES DON'T ACTUALLY SUCCEED; CORRECT?
02:57PM 10 A. CORRECT.
02:57PM 11 Q. AND RDV TRIES TO DO THE BEST IT CAN TO PUT ITS MONEY WHERE
02:57PM 12 IT THINKS IT WILL HAVE WINNERS; RIGHT?
02:57PM 13 A. YES.
02:57PM 14 Q. BUT IT DOESN'T ALWAYS PICK WINNERS?
02:57PM 15 A. NO.
02:57PM 16 Q. OKAY. LET'S JUST RETURN TO THE EXHIBIT, WHICH IS 1944,
02:57PM 17 EXHIBIT 1944.
02:57PM 18 IF YOU GO TO PAGE 8, I THINK WE WERE ON THAT, ON THE
02:57PM 19 RIGHT-HAND SIDE.
02:57PM 20 DO YOU SEE IT REFERS TO BOARD MEETINGS IN THE SECOND TO
02:57PM 21 THE LAST PARAGRAPH?
02:57PM 22 A. YES.
02:57PM 23 Q. AND DO YOU SEE IT MENTIONS A PARTICULAR LAWYER WHO ATTENDS
02:57PM 24 BOARD MEETINGS, DAVID BOIES?
02:58PM 25 DO YOU SEE THAT?

02:58PM 1 A. YES.

02:58PM 2 Q. DO YOU KNOW MR. BOISE PERSONALLY?

02:58PM 3 A. NO.

02:58PM 4 Q. BUT DO YOU KNOW WHO HE IS?

02:58PM 5 A. AS PART OF THIS, YES.

02:58PM 6 Q. AND SOMEONE WHO HAD BEEN FAMOUS FOR CERTAIN CASES HE HAD

02:58PM 7 WORKED ON; RIGHT?

02:58PM 8 A. WHAT I COULD GATHER FROM THE ARTICLE.

02:58PM 9 I DIDN'T KNOW HIM BEFORE THIS, NO.

02:58PM 10 Q. OKAY. LET'S GO TO PAGE 9 OF THE EXHIBIT.

02:58PM 11 AND THEN IF YOU GO TO THE SECOND, OR THE RIGHT-HAND COLUMN

02:58PM 12 ON PAGE 9 AND YOU SEE THERE'S A LINE, OR THERE'S A PARAGRAPH

02:58PM 13 REFERRING TO DR. HENRY KISSINGER?

02:58PM 14 A. YES.

02:58PM 15 Q. AND IT SAYS, "SHE LOOKS LIKE 19, SAYS BOARD MEMBER

02:58PM 16 HENRY KISSINGER, AGE 91," I GUESS; RIGHT?

02:58PM 17 A. YES.

02:58PM 18 Q. AND YOU KNOW WHO DR. KISSINGER IS?

02:59PM 19 A. YES.

02:59PM 20 Q. AND HE WAS THE SECRETARY OF STATE DURING THE NIXON

02:59PM 21 ADMINISTRATION; RIGHT?

02:59PM 22 A. THAT PERSON I KNEW, YES.

02:59PM 23 Q. YES.

02:59PM 24 AND THEN IT GOES ON TO SAY, "ASKED TO ASSESS HER AS A

02:59PM 25 LEADER -- BECAUSE HE'S SEEN A FEW" -- "HE," MEANING

02:59PM 1 DR. KISSINGER, "RESPONDS, 'I CAN'T COMPARE HER TO ANYONE ELSE
02:59PM 2 BECAUSE I HAVEN'T SEEN ANYONE WITH HER SPECIAL ATTRIBUTES. SHE
02:59PM 3 HAS IRON WILL, STRONG DETERMINATION. BUT NOTHING DRAMATIC.
02:59PM 4 THERE IS NO PERFORMANCE ASSOCIATED WITH HER. I HAVE SEEN NO
02:59PM 5 SIGN THAT FINANCIAL GAIN IS OF ANY INTEREST TO HER. SHE'S LIKE
02:59PM 6 A MONK. SHE ISN'T FLASHY. SHE WOULDN'T WALK INTO A ROOM AND
02:59PM 7 TAKE IT OVER. BUT SHE WOULD ONCE THE SUBJECT GETS TO HER
02:59PM 8 FIELD.'"
02:59PM 9 DO YOU SEE THAT?
02:59PM 10 A. I DO. BUT NONE OF THE OPINIONS OF THESE OTHER PEOPLE
02:59PM 11 REALLY MATTERED TO US.
02:59PM 12 Q. BUT IT WAS RIGHT THERE FOR THE TAKING IN THE ARTICLE THAT
02:59PM 13 YOU REVIEWED; RIGHT?
02:59PM 14 A. BUT IT DOESN'T REALLY MATTER WHAT A PERSON SAID ABOUT HER
02:59PM 15 LEADERSHIP CAPABILITIES.
03:00PM 16 WE WERE LISTENING TO WHAT THEY WERE SAYING -- WE WERE
03:00PM 17 INFORMED BY SOME OF THE THINGS THAT WERE IN THIS ARTICLE, BUT
03:00PM 18 WE DIDN'T BASE OUR ENTIRE INVESTMENT DECISION ON THIS ARTICLE.
03:00PM 19 Q. OKAY. BUT YOU RELIED ON THIS IN WRITING YOUR MEMO?
03:00PM 20 A. PARTS OF IT, YES.
03:00PM 21 Q. RIGHT. OKAY.
03:00PM 22 A. THE PARTS WHERE SHE'S TALKING.
03:00PM 23 Q. RIGHT. YOU CHOSE TO EMPHASIZE SOME PARTS OR PAY ATTENTION
03:00PM 24 TO SOME PARTS AND CHOSE NOT TO PAY ATTENTION TO OTHER PARTS;
03:00PM 25 RIGHT?

03:00PM 1 A. WE CHOSE TO PAY ATTENTION TO THE PARTS WHERE SHE'S
03:00PM 2 ACTUALLY TALKING ABOUT RELEVANT THINGS, NOT WHAT OTHER PEOPLE
03:00PM 3 WERE SAYING ABOUT HER.

03:00PM 4 Q. OKAY. YOU DIDN'T CARE ABOUT THAT?

03:00PM 5 A. I DIDN'T SAY I DIDN'T CARE ABOUT IT.

03:00PM 6 IT'S JUST NOT -- IT WASN'T RELEVANT TO OUR INVESTMENT
03:00PM 7 DECISION WHAT HENRY KISSINGER THOUGHT OF HER.

03:00PM 8 Q. OKAY. LET'S GO TO PAGE 11.

03:00PM 9 THE COURT: DO YOU -- MR. COOPERSMITH, DO YOU INTEND
03:00PM 10 TO GO TO SEVERAL OTHER PAGES?

03:00PM 11 SHOULD WE BREAK NOW?

03:00PM 12 MR. COOPERSMITH: WELL, OBVIOUSLY, AS THE COURT
03:00PM 13 PREFERS. THIS IS THE LAST PAGE, SO MAYBE A COUPLE OF POINTS.

03:01PM 14 THE COURT: OKAY. LET'S FINISH THAT THEN.

03:01PM 15 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

03:01PM 16 Q. IF YOU GO TO THE BOTTOM OF PAGE 11, DO YOU SEE AT THE VERY
03:01PM 17 BOTTOM THERE'S A QUOTE FROM MR. BALWANI?

03:01PM 18 DO YOU SEE THAT?

03:01PM 19 A. WHERE IT STARTS "ELIZABETH"?

03:01PM 20 Q. YES.

03:01PM 21 A. YES.

03:01PM 22 Q. IT SAYS, "ELIZABETH HAS HAD A VERY CLEAR VISION OF WHERE
03:01PM 23 SHE WANTED TO TAKE THIS SINCE THE TIME I MET HER, SAYS
03:01PM 24 SUNNY BALWANI."

03:01PM 25 DO YOU SEE THAT?

03:01PM 1 A. YES.

03:01PM 2 Q. AND IT GOES ON IN THE QUOTED PART, "THE BUSINESS STRATEGY,

03:01PM 3 THE TACTICS OF WHAT TO DO FIRST, WHAT TO OFFER WHEN -- THAT HAS

03:01PM 4 CHANGED, BUT THE OVERALL GOAL AND DIRECTION HAS BEEN LINEAR."

03:01PM 5 DO YOU SEE THAT?

03:01PM 6 A. YES.

03:01PM 7 Q. AND THEN IF YOU GO TO JUST THE LAST THING ON THE SAME

03:01PM 8 PAGE, GO OVER TO THE RIGHT-HAND COLUMN, AND THE LAST PARAGRAPH

03:01PM 9 BEFORE THE SECTION WITH THE BIG A, IT SAYS "TODAY HOLMES IS A

03:01PM 10 CO-INVESTOR ON 82 U.S. AND 189 FOREIGN PATENT APPLICATIONS, OF

03:02PM 11 WHICH 18 IN THE UNITED STATES AND 66 ABROAD HAVE BEEN GRANTED.

03:02PM 12 THOSE ARE IN ADDITION TO ANOTHER 186 APPLICATIONS THERANOS HAS

03:02PM 13 FILED WORLDWIDE THAT DON'T LIST HOLMES AS AN INVESTOR, OF WHICH

03:02PM 14 18 HAVE ALREADY BEEN GRANTED."

03:02PM 15 DO YOU SEE THAT?

03:02PM 16 A. YES.

03:02PM 17 Q. AND THE INTELLECTUAL PROPERTY ASPECT OF THERANOS, THAT WAS

03:02PM 18 INTERESTING TO YOU; RIGHT?

03:02PM 19 A. YES.

03:02PM 20 Q. AND, IN FACT, I THINK WE'LL HAVE TO TALK ABOUT THIS

03:02PM 21 TOMORROW, BUT THERE WAS SOME MORE INFORMATION ABOUT THAT IN THE

03:02PM 22 INVESTMENT MATERIALS THAT YOU RECEIVED; RIGHT?

03:02PM 23 A. YES.

03:02PM 24 MR. COOPERSMITH: OKAY.

03:02PM 25 YOUR HONOR, THAT'S GOOD FOR TODAY.

03:02PM 1 THE COURT: OKAY. LET'S TAKE OUR EVENING RECESS,

03:02PM 2 LADIES AND GENTLEMEN.

03:02PM 3 PLEASE, AS ALWAYS, I REMIND YOU OF THE ADMONITION. DO NOT

03:02PM 4 READ, DISCUSS, OR IN ANY WAY ATTEMPT TO LEARN ANYTHING ABOUT

03:02PM 5 THIS CASE DURING THE BREAK.

03:02PM 6 WE'LL SEE YOU BACK TOMORROW MORNING AT 9:00 A.M.,

03:02PM 7 9:00 A.M., PLEASE.

03:02PM 8 AND, MS. PETERSON, IF YOU COULD RETURN TOMORROW MORNING, I

03:02PM 9 WOULD BE GRATEFUL.

03:02PM 10 AND HAVE A WONDERFUL EVENING. THANK YOU.

03:03PM 11 (JURY OUT AT 3:03 P.M.)

03:03PM 12 THE COURT: YOU CAN STAND DOWN.

03:03PM 13 ALL RIGHT. THANK YOU. PLEASE BE SEATED.

03:03PM 14 THE RECORD SHOULD REFLECT THAT OUR JURY HAS LEFT.

03:03PM 15 MS. PETERSON HAS LEFT THE COURTROOM.

03:03PM 16 ALL COUNSEL AND MR. BALWANI REMAIN.

03:03PM 17 ANYTHING FURTHER BEFORE WE BREAK FOR THE DAY?

03:03PM 18 MR. LEACH?

03:03PM 19 MR. LEACH: BRIEFLY, YOUR HONOR.

03:03PM 20 THE COURT: SURE.

03:03PM 21 MR. LEACH: I JUST WANTED TO EXPLAIN FURTHER THE

03:04PM 22 BASIS FOR THE OBJECTION.

03:04PM 23 THE ARTICLE IS IN EVIDENCE. IT'S IN EVIDENCE FOR A

03:04PM 24 PARTICULAR PURPOSE.

03:04PM 25 MR. COOPERSMITH --

03:04PM 1 MR. COOPERSMITH: IF I COULD JUST DIRECT, I THINK

03:04PM 2 MS. PETERSON'S COUNSEL IS STILL IN THE ROOM, AND I'M NOT SURE

03:04PM 3 THAT'S APPROPRIATE WHILE SHE'S STILL UNDER CROSS.

03:04PM 4 THE COURT: WELL, OKAY. IT LOOKS LIKE HE MIGHT BE

03:04PM 5 LEAVING.

03:04PM 6 (PROCEEDINGS HELD OUT OF THE PRESENCE OF MS. PETERSON'S

03:04PM 7 COUNSEL.)

03:04PM 8 THE COURT: MR. LEACH.

03:04PM 9 MR. LEACH: SO THE BASIS OF THE OBJECTION,

03:04PM 10 YOUR HONOR, WAS SIMPLY THE READING OF QUOTES FROM PARTICULAR

03:04PM 11 PEOPLE WITH NO QUESTION.

03:04PM 12 I THINK IT WAS ARGUMENT. THE ARTICLE IS IN FOR THE

03:04PM 13 PURPOSE OF DID YOU READ THIS AND DID YOU RELY ON IT, AND I

03:04PM 14 THINK THE POINT OF THE EXAMINATION WAS TO SIMPLY READ IT.

03:04PM 15 SO I WANTED TO ARTICULATE THAT. I THINK WE'RE AT THE END,

03:04PM 16 BUT THAT WAS THE BASIS OF THE OBJECTION.

03:04PM 17 THE COURT: OKAY. THANK YOU.

03:04PM 18 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

03:04PM 19 WE ARE DONE WITH THAT EXHIBIT.

03:04PM 20 THE COURT: OKAY.

03:04PM 21 MR. COOPERSMITH: BUT IN ANY EVENT, I THINK IT'S

03:05PM 22 PROPER CROSS TO HIGHLIGHT THINGS THAT THE GOVERNMENT ITSELF PUT

03:05PM 23 INTO EVIDENCE, SO THAT'S WHAT I WAS DOING.

03:05PM 24 THE COURT: OKAY. ALL RIGHT. WELL, IT'S DONE. AND

03:05PM 25 THE JURY HAS IT, SO GREAT.

03:05PM 1 MR. COOPERSMITH: THANK YOU.

03:05PM 2 THE COURT: SO TIMING, JUST TIMING, WHAT DO YOU

03:05PM 3 THINK ABOUT TOMORROW?

03:05PM 4 MR. COOPERSMITH: YOU KNOW, I -- MY ESTIMATE FOR HER

03:05PM 5 WAS ABOUT TWO TO TWO AND A HALF HOURS, WHICH ABOUT HALF AN HOUR

03:05PM 6 IS DONE.

03:05PM 7 SO I'M HOPEFUL THAT I CAN GET THIS DONE, YOU KNOW,

03:05PM 8 TOMORROW MORNING.

03:05PM 9 THE COURT: OH, OKAY.

03:05PM 10 MR. COOPERSMITH: OBVIOUSLY THINGS HAPPEN, BUT

03:05PM 11 THAT'S MY GOAL.

03:05PM 12 THE COURT: SURE.

03:05PM 13 MR. LEACH.

03:05PM 14 MR. LEACH: REDIRECT WILL BE LIMITED.

03:05PM 15 WE HAVE ANOTHER WITNESS AVAILABLE TOMORROW AFTERNOON.

03:05PM 16 I THINK, GIVEN THE PACE, WE WON'T GET PAST THAT WITNESS.

03:05PM 17 BUT I'LL TALK WITH MR. SCHENK AND MR. BOSTIC ABOUT IF WE NEED

03:05PM 18 ANOTHER WITNESS EVEN AFTER THE WITNESS AFTER MS. PETERSON.

03:05PM 19 AND THEN ON FRIDAY, I THINK GIVEN THE PACE, WE MAY NEED TO

03:06PM 20 SUPPLEMENT OUR DISCLOSURES TO THE DEFENSE IN TERMS OF WHO WE

03:06PM 21 ARE CALLING.

03:06PM 22 THE COURT: OKAY. THE QUESTION ON MS. WALSH'S

03:06PM 23 MOTION, IS THAT SOMETHING THAT WE NEED TO TALK ABOUT TOMORROW

03:06PM 24 MORNING, OR IS THAT LIKELY WE'LL GET TO THAT WITNESS?

03:06PM 25 MR. SCHENK: YES, YOUR HONOR.

03:06PM 1 THE WITNESS AFTER MS. PETERSON IS DR. DHAWAN.

03:06PM 2 THE COURT: OKAY.

03:06PM 3 MR. SCHENK: DR. DHAWAN I THINK IS TRAVELLING TO A

03:06PM 4 MEDICAL CONFERENCE.

03:06PM 5 SO IF WE DON'T FINISH HIM ON WEDNESDAY, HE'S GOING TO BE

03:06PM 6 OUT OF TOWN FOR A FEW DAYS, SO WE'LL HAVE TO AGAIN TAKE A

03:06PM 7 WITNESS OUT OF ORDER.

03:06PM 8 MY HOPE IS THAT HIS DIRECT AND CROSS ARE RELATIVELY BRIEF

03:06PM 9 AND THAT WE COULD FINISH HIM.

03:06PM 10 I'M NOT EXACTLY SURE HOW LATE WE'RE GOING TOMORROW, BUT I

03:06PM 11 JUST WANTED TO INFORM THE COURT THAT IF WE DON'T FINISH HIM ON

03:06PM 12 WEDNESDAY, MY UNDERSTANDING IS THAT HE'S UNAVAILABLE TO PICK UP

03:06PM 13 HIS TESTIMONY FRIDAY MORNING AND WE'LL HAVE TO START WITH A

03:06PM 14 DIFFERENT WITNESS.

03:06PM 15 THE COURT: OKAY.

03:06PM 16 MR. SCHENK: BUT, YES, TO ANSWER THE COURT'S

03:06PM 17 QUESTION, IT SOUNDS LIKE TOMORROW MORNING -- OR IT SOUNDS LIKE

03:06PM 18 THE FIRST BREAK WOULD BE THE APPROPRIATE TIME TO HANDLE THE

03:07PM 19 DEFENSE MOTION REGARDING A DR. DHAWAN EXHIBIT.

03:07PM 20 THE COURT: OKAY. THANK YOU.

03:07PM 21 MS. WALSH.

03:07PM 22 MS. WALSH: YES, YOUR HONOR.

03:07PM 23 HOW LATE ARE WE GOING TOMORROW?

03:07PM 24 THE COURT: WELL, I WAS GOING TO ASK WHICH ONE OF

03:07PM 25 YOU WAS GOING TO ASK THE JURY IF THEY CAN STAY UNTIL 10:00 P.M.

03:07PM 1 (LAUGHTER.)

03:07PM 2 MS. WALSH: MR. COOPERSMITH.

03:07PM 3 THE COURT: I HAD PLANNED TO GO UNTIL 4:00 TOMORROW,

03:07PM 4 THAT WAS MY THOUGHT, TO HAVE ONE OF OUR LONGER DAYS, MAYBE

03:07PM 5 5:00. BUT CERTAINLY AT LEAST UNTIL 4:00. THAT WAS MY HOPE.

03:07PM 6 MS. WALSH: OKAY. IF IT'S A LONGER DAY, I

03:07PM 7 ANTICIPATE BEING FINISHED WITH CROSS OF DR. DHAWAN, BUT IT

03:07PM 8 DEPENDS ON THE DIRECT.

03:07PM 9 BUT THE LATER WE GO, THE GREATER CHANCE IT WILL BE --

03:07PM 10 THE COURT: SURE. AND IT MAY BE THAT I THINK THE

03:07PM 11 JURORS ARE EAGER TO HAVE THINGS MOVE ALONG AS WELL, AND YOU

03:07PM 12 KNOW, WHAT IS THE DIFFERENCE BETWEEN 4:00 AND 5:00 P.M. IT'S

03:07PM 13 JUST ANOTHER HOUR ON THE FREEWAY, I SUPPOSE. BUT WE'LL SEE HOW

03:07PM 14 THAT WORKS. THANK YOU FOR THAT THEN.

03:08PM 15 OKAY. MAYBE WE'LL HAVE DISCUSSION REGARDING YOUR MOTION

03:08PM 16 AT A BREAK TOMORROW.

03:08PM 17 AND I APOLOGIZE FOR THE LATE START THIS MORNING.

03:08PM 18 WE ALSO HAVE THE JUROR'S LISTS, AND WE'LL NEED TO TALK, WE

03:08PM 19 SHOULD TALK ABOUT THIS SOMETIME TO SEE WHERE WE CAN CAPTURE

03:08PM 20 SOME MORE TIME, BUT WE HAVE TO FIND TIME TO DO THAT.

03:08PM 21 OKAY.

03:08PM 22 MR. SCHENK: THANK YOU.

03:08PM 23 MR. COOPERSMITH: THANK YOU.

03:08PM 24 MR. LEACH: THANK YOU.

03:08PM 25 THE COURT: GREAT. WE'LL SEE YOU TOMORROW.

03:08PM 1 OH, YOU CAN SIT DOWN. PLEASE. GO AHEAD.

03:08PM 2 (COURT ADJOURNED AT 3:08 P.M.)

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1
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3 CERTIFICATE OF REPORTERS
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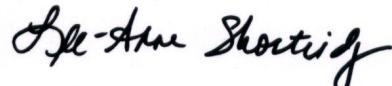
7 WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE
8 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
9 CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
10 HEREBY CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

14 
15

16

IRENE RODRIGUEZ, CSR, CRR
17 CERTIFICATE NUMBER 8076
18



19

LEE-ANNE SHORTRIDGE, CSR, CRR
20 CERTIFICATE NUMBER 9595
21

22 DATED: APRIL 26, 2022
23
24
25